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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2023–0080]

RIN 3150–AK98

List of Approved Spent Fuel Storage Casks: NAC Multi-Purpose Canister (NAC–MPC) System, Certificate of Compliance No. 1025, Renewal of Initial Certificate and Amendment Numbers 1 Through 8

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the NAC Multi-Purpose Canister (NAC–MPC) System listing within the ''List of approved spent fuel storage casks'' to renew, for 40 years, the initial certificate and Amendment Nos. 1 through 8 of Certificate of Compliance No. 1025. The renewal of the initial certificate and Amendment Nos. 1 through 8 revises the certificate of compliance's conditions and technical specifications to address aging management activities related to the structures, systems, and components important to safety of the dry storage system to ensure that these will maintain their intended functions during the period of extended storage operations.

DATES: This direct final rule is effective October 17, 2023, unless significant adverse comments are received by September 5, 2023. If this direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID NRC–2023–0080, at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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: Chris Markley, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–6293, email: *Christopher.Markley@nrc.gov* and Andrew Carrera, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–1078, email: *Andrew.Carrera@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0080 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–2023–0080. Address questions about NRC dockets to Dawn Forder, telephone: 301–415–3407, email: *Dawn.Forder@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

Please include Docket ID NRC–2023–0080 in your comment submission. The NRC requests that you submit comments through the Federal rulemaking website at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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. Rulemaking Procedure

This rule involves the renewal of Certificate of Compliance No. 1025, which includes the initial certificate and Amendment Nos. 1 through 8. The renewal only applies to the storage of spent fuel in an independent spent fuel storage installation at power reactor sites under a general license pursuant to the requirements of 10 CFR part 72, ''Approval of Spent Fuel Storage Casks,'' and does not address or apply to transportation of the NAC–MPC System. Transport of the NAC–MPC System would be subject to the separate requirements of 10 CFR part 71, ''Packaging and Transportation of Radioactive Material.'' As described in the Statement of Considerations to the final rule ''License and Certificate of Compliance Terms'' (76 FR 8872; February 16, 2011), a renewal reaffirms the original design basis, perhaps with some modifications, but does not involve reevaluating the original design basis in accordance with current review standards, which may be different from the standards in place when the cask design was initially certified. The NRC is using the ''direct final rule procedure'' to issue this renewal because it represents a limited and routine change to an existing certificate of compliance that is expected to be non-controversial. Adequate protection of public health and safety continues to be reasonably assured. The amendment to the rule will become effective on October 17, 2023. However, if the NRC receives any significant adverse comment on this direct final rule by September 5, 2023, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register** or as otherwise appropriate. In general, absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule, certificate of compliance, or technical specifications.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the Nuclear Waste Policy Act states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule that added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''Storage of Spent Fuel In NRC-Approved Storage Casks at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on April 10, 2000, that approved the NAC Multi-Purpose Canister (NAC–MPC) System design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1025. On August 28, 2007 (72 FR 49561), the NRC amended the scope of the general licenses issued under § 72.210 to include the storage of spent fuel in an independent spent fuel storage installation (ISFSI) at power reactor sites to persons authorized to possess or operate nuclear power reactors under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' On February 16, 2011 (76 FR 8872), the NRC amended subparts K and L in 10 CFR part 72, to extend and clarify the term limits for certificates of compliance and revised the conditions for spent fuel storage casks renewals, including adding requirements for the safety analysis report to include time-limited aging analyses and a description of aging management programs. The NRC also clarified the terminology used in the regulations to use ''renewal'' rather than ''reapproval'' to better reflect that extending the term of a currently approved cask design is based on the cask design standards in effect at the time the certificate of compliance was approved rather than current standards.

IV. Discussion of Changes

The term certified by the initial Certificate of Compliance No. 1025 was 20 years. The period of extended operation for each cask begins 20 years after the cask is first used by the general licensee to store spent fuel. On December 18, 2019, as supplemented on August 10, 2021; March 18, 2022; and July 22, 2022, NAC International, Inc. submitted a request to renew Certificate of Compliance No. 1025 for the NAC–MPC System design for an additional 40 years beyond the initial certificate term (ADAMS Accession Nos. ML19357A178, ML21231A154, ML22077A831, and ML22203A127 respectively).

The NAC–MPC System is provided in three configurations for use at (1) Yankee Atomic Electric Company's Yankee Rowe (YR) Nuclear Station (hereafter ''YR–MPC''), (2) Connecticut Yankee (CY) Haddam Neck Nuclear Power Plant (hereafter ''CY–MPC''), and (3) Dairyland Power Cooperative La Crosse Boiling Water Reactor (LACBWR) Nuclear Power Plant (hereafter ''LACBWR–MPC''). Each NAC–MPC System includes a transportable storage canister (TSC) provided with a fuel basket designed to accommodate the allowable spent fuel contents, a vertical concrete cask (VCC), and a transfer cask (TFR) sized to accommodate the pertinent TSC. The YR–MPC, CY–MPC,

and LACBWR–MPC have similar components and operating features but different physical dimensions, weights, fuel contents, and storage capacities. All configurations are designed such that subsequent transport of the dry-stored spent fuel contents inside each TSC could, if approved, use the certified NAC International's storage transport cask package. This rulemaking does not authorize the transport, instead, the rulemaking authorizes the design of the system, which provides a design compatible with future transport.

The TSC provides the confinement pressure boundary, heat transfer, criticality control, and structural integrity for the safe dry storage of the spent fuel contents. The TSC is stored in the central cavity of the VCC. The VCC provides radiation shielding and structural protection for the TSC and contains internal air flow paths that allow the decay heat from the TSC contents to be removed by natural air circulation around the TSC shell. The principal components of the NAC MPC System include the following:

- TSC (YR–MPC, CY–MPC, and LACBWR–MPC) with pressurized-water reactor or boiling water reactor fuel basket (and damaged fuel cans)
- VCC (YR–MPC, CY–MPC, and LACBWR–MPC)
- TFR (YR–MPC as modified and transferred or sold to LACBWR–MPC, and CY–MPC) and transfer adapter
- spent fuel assemblies
- fuel transfer and auxiliary equipment (*e.g.,* lift yoke, vertical cask transporter, air pads, heavy haul transfer trailer, vacuum drying and helium back-fill system with a helium mass spectrometer leak detector, welding equipment)
- VCC temperature monitoring system
- ISFSI storage pad
- ISFSI security equipment

The renewal of the initial certificate and Amendment Nos. 1 through 8 was conducted in accordance with the renewal provisions in § 72.240. The NRC's regulations require the safety analysis report for the renewal to include time-limited aging analyses that demonstrate that structures, systems, and components important to safety will continue to perform their intended function for the requested period of extended operation and a description of the aging management programs for the management of issues associated with aging that could adversely affect structures, systems, and components important to safety. The NRC spent fuel storage regulations in § 72.240 authorize the NRC to revise the certificate of compliance to include any additional terms, conditions, and specifications it deems necessary to ensure the safe operation of the cask during the certificate of compliance's renewal term. Here, the NRC is adding four new conditions to the renewal of the certificate of compliance, which will ensure the safe operation of the cask during the certificate of compliance's renewal term and will allow the use of the NAC–MPC System during the approved period of extended operation. The NRC is amending the condition that describes the authorization for use of the NAC–MPC System design under the general license. Chapter 4 of the Preliminary Safety Evaluation Report, ''Changes to Certificate of Compliance and Technical Specifications,'' (ML22297A270) provides a consolidated list of, and the basis for, the changes to the CoC conditions and technical specifications resulting from the staff's review of the renewal application.

The new conditions added to the renewal of the initial certificate of compliance and Amendment Nos. 1 through 8 are:

- A condition requiring the certificate of compliance holder to submit an updated final safety analysis report within 90 days after the effective date of the renewal. The updated final safety analysis report must reflect the changes resulting from the review and approval of the renewal of the certificate of compliance. This condition ensures that final safety analysis report changes are made in a timely fashion to enable general licensees using the storage system during the period of extended operation to develop and implement necessary procedures related to renewal and aging management activities. The certificate of compliance holder is required to continue to update the final safety analysis report pursuant to the requirements of § 72.248.
- A condition requiring each general licensee using the NAC–MPC System design to include, in the evaluations required by § 72.212(b)(5), evaluations related to the terms, conditions, and specifications of this certificate of compliance amendment as modified (*i.e.,* changed or added) as a result of the renewal of the certificate of compliance and include, in the document review required by § 72.212(b)(6), a review of the final safety analysis report changes resulting from the renewal of the certificate of compliance and the NRC Safety Evaluation Report for the renewal of the certificate of compliance. The general licensee would also be required to ensure that the evaluations required by § 72.212(b)(7) in response to these changes are conducted and the determination required by § 72.212(b)(8) is made. This condition also makes it clear that to meet the requirements in § 72.212(b)(11), general licensees that currently use a NAC–MPC System will need to update their § 72.212 reports, even if they do not put additional NAC–MPC Systems into service after the renewal's effective date. These evaluations, reviews, and determinations are to be completed before the dry storage system enters the period of extended operation (which begins 20 years after the first use of the NAC–MPC System) or no later than 365 days after the effective date of this rule, whichever is later. This will provide general licensees a minimum of 365 days to comply with the new terms, conditions, specifications, and other changes to the certificate of compliance and to make the necessary determinations required by § 72.212(b)(8) as to whether activities related to the storage of spent nuclear fuel using the renewed certificate of compliance involve a change in the facility Technical Specifications or requires a license amendment for the facility.
- A condition requiring all future amendments and revisions to the certificate of compliance (*i.e.,* the initial certificate 1025 and Amendment Nos. 1 through 8) to include evaluations of the impacts to aging management activities (*i.e.,* time-limited aging analyses and aging management programs) to ensure they remain adequate for any changes to structures, systems, and components important to safety within the scope of renewal. This condition ensures that future amendments to the certificate of compliance address the renewed design bases for the certificate of compliance, including aging management impacts that may arise from the changes to the system in proposed future amendments.

Additionally, the condition for the initial certificate and Amendment Nos. 1 through 8 would be amended to reflect changes to the scope of the general license granted by § 72.210 that were made after the approval of the initial certificate. The authorization is amended to allow persons authorized to possess or operate a nuclear power reactor under 10 CFR part 52 to use the NAC–MPC System under the general license issued under § 72.210.

The NRC made one corresponding change from the technical specifications for the initial certificate of compliance and Amendment Nos. 1 through 8 by adding a section addressing the aging management program. General licensees using the NAC–MPC System design during the period of extended operation will need to establish, implement, and maintain written procedures for each

applicable aging management program in the final safety analysis report to use the NAC–MPC System design during the approved period of extended operation. The procedures will need to include provisions for changing aging management program elements, as necessary, and within the limitations of the approved design bases to address new information on aging effects based on inspection findings and/or industry operating experience. General licensees will also be required to perform tollgate assessments on the state of knowledge of aging-related operational experience, research, monitoring, and inspections to ascertain the ability of in-scope NAC–MPC System to continue to perform their intended safety functions throughout the renewed period of extended operation.

General licensees will need to establish and implement these written procedures prior to entering the period of extended operation (which begins 20 years after the first use of the cask system) or no later than 365 days after the effective date of this rule, whichever is later. The general licensee is required to maintain these written procedures for as long as the general licensee continues to operate NAC–MPC System in service for longer than 20 years.

Under § 72.240(d), the design of a spent fuel storage cask will be renewed if (1) the quality assurance requirements in 10 CFR part 72, subpart G, ''Quality Assurance,'' are met, (2) the requirements of § 72.236(a) through (i) are met, and (3) the application includes a demonstration that the storage of spent fuel has not, in a significant manner, adversely affected the structures, systems, and components important to safety. Additionally, § 72.240(c) requires that the safety analysis report accompanying the application contain time-limited aging analyses that demonstrate that the structures, systems, and components important to safety will continue to perform their intended function for the requested period of extended operation and a description of the aging management program for management of aging issues that could adversely affect structures, systems, and components important to safety.

As documented in the preliminary safety evaluation report, the NRC reviewed the application for the renewal of the certificate of compliance and the conditions in the certificate of compliance and determined that the conditions in subpart G, § 72.236(a) through (i), and § 72.238 have been met and the application includes a demonstration that the storage of spent nuclear fuel has not, in a significant manner, adversely affected structures, systems, and components important to safety. The NRC's safety review determined that the NAC–MPC System, with the added terms, conditions, and specifications in the certificate of compliance and the technical specifications, will continue to meet the requirements of 10 CFR part 72 for an additional 40 years beyond the initial certificate term. Consistent with § 72.240, the NRC is renewing the NAC International Inc. NAC–MPC System initial certificate 1025 and Amendment Nos. 1 through 8.

Extending the expiration date of the approval for the initial certificate and Amendment Nos. 1 through 8 for 40 years and requiring the implementation of aging management activities during the period of extended operation does not impose any modification or addition to the design of a cask system's structures, systems, and components important to safety, or to the procedures or organization required to operate the system during the initial 20-year storage term certified by the cask's initial certificate of compliance. General licensees who have loaded these casks, or who load these casks in the future under the specifications of the applicable renewed certificate of compliance, may store spent fuel in these cask system designs for 20 years without implementing the aging management program. For any casks that have been in use for more than 20 years, the general licensee will have 365 days to complete the analyses required to use the cask system design pursuant to the terms and conditions in the renewed certificate of compliance. As explained in the 2011 final rule that amended 10 CFR part 72 (76 FR 8872), the general licensee's authority to use a particular storage cask design under an approved certificate of compliance will be for at least the term certified by the cask's certificate of compliance. For casks placed into service before the expiration date of the initial certificate, the general licensee's authority to use the cask would be extended for an additional 40 years from the date the initial certificate expired. For casks placed into service after the expiration date of the initial certificate and before the effective date of this rule, the general licensee's authority to use the cask would last the length of the term certified by the cask's certificate of compliance (*i.e.,* 40 years after the cask is placed into service). For casks placed into service after this rule becomes effective, the general licensee's authority to use the cask would expire 40 years after the cask is first placed into service.

This direct final rule revises the NAC–MPC System design listing in § 72.214 by renewing, for 40 more years, the initial certificate and Amendment Nos. 1 through 8 of Certificate of Compliance No. 1025. The renewed certificate of compliance includes the changes to the certificate of compliance and technical specifications previously described. The renewed certificate of compliance includes the terms, conditions, and specifications that will ensure the safe operation of the cask during the renewal term and the added conditions that will require the implementation of an aging management program. The preliminary safety evaluation report describes the new and revised conditions in the certificate of compliance, the changes to the technical specifications, and the NRC staff evaluation.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC revises the NAC–MPC System design listed in § 72.214, ''List of approved spent fuel storage casks.'' This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Agreement State Compatibility

Under the ''Agreement State Program Policy Statement'' approved by the Commission on October 2, 2017, and published in the **Federal Register** on October 18, 2017 (82 FR 48535), this rule is classified as Compatibility Category NRC—Areas of Exclusive NRC Regulatory Authority. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR chapter I. Therefore, compatibility is not required for program elements in this category.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain

Language in Government Writing,'' published June 10, 1998 (63 FR 31885).

VIII. Environmental Assessment and Finding of No Significant Impact

Under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC has determined that this direct final rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment.

A. The Action

The proposed action is to amend § 72.214 to revise the NAC–MPC System listing within the ''List of approved spent fuel storage casks'' to renew, for an additional 40 years, the initial certificate and Amendment Nos. 1 through 8 of Certificate of Compliance No. 1025.

B. The Need for the Action

This direct final rule renews the certificate of compliance for the NAC–MPC System design within the list of approved spent fuel storage casks to allow power reactor licensees to store spent fuel at reactor sites in casks with the approved modifications under the general license provisions in 10 CFR part 72. Specifically, this rule extends the expiration date for the NAC–MPC System certificate of compliance for an additional 40 years, allowing a power reactor licensee to continue using the cask design during a period of extended operation for a term certified by the cask's renewed certificate of compliance. The renewal only applies to the storage of spent fuel in an independent spent fuel storage installation at power reactor sites under a general license pursuant to the requirements of 10 CFR part 72; it does not address or apply to transportation of the NAC–MPC System. Transport of the NAC–MPC System would be subject to the separate requirements of 10 CFR part 71.

This direct final rule would add conditions to the certificate of compliance and technical specifications necessary to have confidence that the structures, systems, and components important to safety will continue to perform their intended functions during the requested period of extended operation and that the design of the cask would continue to maintain confinement, shielding, and criticality control in the event of an accident during the period of extended operation. These conditions are needed to provide reasonable assurance that adequate protection of public health and safety will continue during the period of extended operation. Chapter 4 of the Preliminary Safety Evaluation Report, ''Changes to Certificate of Compliance and Technical Specifications,'' (ML22297A270) provides a consolidated list of, and the basis for, the changes to the CoC conditions and technical specifications resulting from the staff's review of the renewal application.

The new conditions added to the renewal of the initial certificate of compliance and Amendment Nos. 1 through 8 are:

- A condition requiring the certificate of compliance holder to submit an updated final safety analysis report within 90 days after the effective date of the renewal. The updated final safety analysis report must reflect the changes resulting from the review and approval of the renewal of the certificate of compliance. This condition ensures that final safety analysis report changes are made in a timely fashion to enable general licensees using the storage system during the period of extended operation to develop and implement necessary procedures related to renewal and aging management activities. The certificate of compliance holder is required to continue to update the final safety analysis report pursuant to the requirements of § 72.248.
- A condition requiring each general licensee using the NAC–MPC System design to include, in the evaluations required by § 72.212(b)(5), evaluations related to the terms, conditions, and specifications of this certificate of compliance amendment as modified (*i.e.,* changed or added) as a result of the renewal of the certificate of compliance and include, in the document review required by § 72.212(b)(6), a review of the final safety analysis report changes resulting from the renewal of the certificate of compliance and the NRC Safety Evaluation Report for the renewal of the certificate of compliance. The general licensee would also be required to ensure that the evaluations required by § 72.212(b)(7) in response to these changes are conducted and the determination required by § 72.212(b)(8) is made. This condition also makes it clear that to meet the requirements in § 72.212(b)(11), general licensees that currently use a NAC–MPC System will need to update their § 72.212 reports, even if they do not put additional NAC–MPC Systems into service after the renewal's effective date. These evaluations, reviews, and determinations are to be completed before the dry storage system enters the period of extended operation (which begins 20 years after the first use of the NAC–MPC System) or no later than 365 days after the effective date of this rule, whichever is later. This will provide general licensees a minimum of 365 days to comply with the new terms, conditions, specifications, and other changes to the certificate of compliance and to make the necessary determinations required by § 72.212(b)(8) as to whether activities related to the storage of spent nuclear fuel using the renewed certificate of compliance involve a change in the facility Technical Specifications or requires a license amendment for the facility.
- A condition requiring all future amendments and revisions to the certificate of compliance (*i.e.,* the initial certificate 1025 and Amendment Nos. 1 through 8) to include evaluations of the impacts to aging management activities (*i.e.,* time-limited aging analyses and aging management programs) to ensure they remain adequate for any changes to structures, systems, and components important to safety within the scope of renewal. This condition ensures that future amendments to the certificate of compliance address the renewed design bases for the certificate of compliance, including aging management impacts that may arise from the changes to the system in proposed future amendments.

Additionally, the condition for the initial certificate and Amendment Nos. 1 through 8 would be amended to reflect changes to the scope of the general license granted by § 72.210 that were made after the approval of the initial certificate. The authorization is amended to allow persons authorized to possess or operate a nuclear power reactor under 10 CFR part 52 to use the NAC–MPC System under the general license issued under § 72.210.

The NRC made one corresponding change from the technical specifications for the initial certificate of compliance and Amendment Nos. 1 through 8 by adding a section addressing the aging management program. General licensees using the NAC–MPC System design during the period of extended operation will need to establish, implement, and maintain written procedures for each applicable aging management program in the final safety analysis report to use the NAC–MPC System design during the approved period of extended operation. The procedures will need to include provisions for changing aging management program elements, as necessary, and within the limitations of

the approved design bases, to address new information on aging effects based on inspection findings and/or industry operating experience. General licensees will also be required to perform tollgate assessments on the state of knowledge of aging-related operational experience, research, monitoring, and inspections to ascertain the ability of in-scope NAC–MPC System to continue to perform their intended safety functions throughout the renewed period of extended operation.

C. Environmental Impacts of the Action

On July 18,1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impacts of using NRC-approved storage casks were analyzed in the environmental assessment for the 1990 final rule and are described in ''Environmental Assessment for Proposed Rule Entitled, 'Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites.' '' The potential environmental impacts for the longer-term use of dry cask designs and the renewal of certificates of compliance were analyzed in the environmental assessment for the 2011 final rule establishing the regulatory requirements for renewing certificates of compliance and are described in ''Environmental Assessment and Finding of No Significant Impact for the Final Rule Amending 10 CFR part 72 License and Certificate of Compliance Terms'' (ML100710441). The environmental impacts from continued storage were also considered in NUREG–2157, ''Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel.'' The environmental assessment for this renewal of the initial certificate and Amendment Nos. 1 through 8 tiers off of the environmental assessment for the February 16, 2011, final rule and NUREG–2157. Tiering from past environmental assessments is a standard process under the National Environmental Policy Act of 1969, as amended.

The NAC–MPC System design is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an independent spent fuel storage installation, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, can include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

A renewal reaffirms the original design basis, perhaps with some modifications. The renewal allows the cask to be used during a period of extended operation that corresponds to the term certified by the cask's certificate of compliance in the renewal. As a condition of the renewal, the NRC requires an aging management program that will ensure that structures, systems, and components important to safety will perform as designers intended during the renewal period. The renewal does not reflect a change in design or fabrication of the cask system. Because the aging management program will ensure the structures, systems, and components important to safety for the cask will perform as designed for the renewal period, any resulting occupational exposure or offsite dose rates from the renewal of the initial certificate and Amendment Nos. 1 through 8 would remain well within the limits provided in 10 CFR part 20, ''Standards for Protection Against Radiation.'' The NRC has also determined that the design of the cask system would continue to maintain confinement, shielding, and criticality control in the event of an accident. The NRC determined that the structures, systems, and components important to safety will continue to perform their intended functions during the requested period of extended operation. The NRC determined that the renewed NAC–MPC System design, when used under the conditions specified in the renewed certificate of compliance, the technical specifications, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be reasonably assured. The NRC documented its safety findings in the preliminary safety evaluation report.

D. Alternative to the Action

The alternative to this action is to deny renewing the NAC–MPC System design and to not issue the direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into the NAC–MPC System design after the expiration date of the certificate of compliance or that seeks to continue storing spent nuclear fuel in the NAC–MPC System design for longer than the term certified by the cask's certificate of compliance for the initial certificate (*i.e.,* more than 20 years) would have to request an exemption from the requirements of §§ 72.212 and 72.214 or would have to load the spent nuclear fuel into a different approved cask design. Under this alternative, those licensees interested in continuing to use the NAC–MPC System design would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee. If the general licensee is granted an exemption, the environmental impacts would be the same as the proposed action. If the general licensee is not granted an exemption, the general licensee would need to unload the NAC–MPC system and load the fuel into another cask system design, which would result in environmental impacts that are greater than for the proposed action because activities associated with cask loading and decontamination may result in some small liquid and gaseous effluent.

E. Alternative Use of Resources

Renewal of the initial certificate and Amendment Nos. 1 through 8 to Certificate of Compliance No. 1025 would result in no irreversible commitment of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Finding of No Significant Impact

The proposed action is to amend § 72.214 to revise the NAC–MPC System listing within the ''List of Approved Spent Fuel Storage Casks'' to renew, for an additional 40 years, the initial certificate and Amendment Nos. 1 through 8 of Certificate of Compliance No. 1025. The environmental impacts of the action have been reviewed under the requirements in the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, and are described in the preceding environmental assessment in Section VIII of this notice.

The renewal does not reflect a change in design or fabrication of the cask system as approved for the initial certificate or Amendment Nos. 1 through 8. The NRC determined that the renewed NAC–MPC System design, when used under the conditions specified in the renewed certificate of compliance, the technical specifications, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate

protection of public health and safety will continue to be reasonably assured.

Based on the foregoing environmental assessment, the NRC concludes that this direct final rule, ''List of Approved Spent Fuel Storage Casks: NAC–MPC System, Certificate of Compliance No. 1025, Renewal of the initial certificate and Amendment Nos. 1 through 8,'' will not have a significant effect on the quality of the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule and the Commission has determined not to prepare an environmental impact statement for the proposed action.

The final finding of no significant impact and the other related environmental documents, including NUREG–2157, the ''Environmental Assessment and Finding of No Significant Impact for the Final Rule Amending 10 CFR part 72 License and Certificate of Compliance Terms'' (2010) are available for public inspection through the NRC public website using ADAMS as described in Section I, ''Obtaining Information and Submitting Comments.''

IX. Paperwork Reduction Act Statement

This direct final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget control number.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this direct final rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and NAC International, Inc. NAC International, Inc. is a diversified energy technology company that engages in manufacturing, has more than 500 employees, and does not qualify as a small entity based on the Regulatory Flexibility Act or the NRC size standards at § 2.810. Similarly, none of the existing nuclear power plants storing spent nuclear fuel qualify as small entities under the Regulatory Flexibility Act or NRC size standards. Therefore, neither the current licensees affected by this rule, nor NAC International, Inc., fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC. Therefore, pursuant to its delegated authority, the Executive Director for Operations certifies under section 605 of the Regulatory Flexibility Act ''that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.''

XI. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs under a general license to store spent nuclear fuel if (1) it notifies the NRC in advance; (2) the spent fuel is stored under the conditions specified in the cask's certificate of compliance; and (3) the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On April 10, 2000 (64 FR 12444), the NRC issued an amendment to 10 CFR part 72 that approved the NAC–MPC System design by adding it to the list of NRC-approved cask designs in § 72.214.

On December 18, 2019, as supplemented on August 10, 2021; March 18, 2022; and July 22, 2022, NAC International, Inc. submitted a request to renew Certificate of Compliance No. 1025 for the NAC–MPC System design for an additional 40 years beyond the initial certificate term (ML19357A178, ML21231A154, ML22077A831, and ML22203A127 respectively).

The alternative to this action is to withhold approval of the renewal of the initial certificate and Amendments Nos. 1 through 8 and to require any 10 CFR part 72 general licensee seeking to continue the storage of spent nuclear fuel in the NAC–MPC System design using the initial certificate or Amendments No. 1 through 8 beyond the initial 20-year storage term certified by the cask's initial certificate of compliance to request an exemption from the requirements of §§ 72.212 and 72.214. The term for general licenses would not be extended from 20 years to 40 years. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of this direct final rule is consistent with previous NRC actions. Further, as documented in the preliminary safety evaluation report and environmental assessment, this direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of this direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory; therefore, this action is recommended.

XII. Backfitting and Issue Finality

The NRC has determined that the actions in this direct final rule do not require a backfit analysis because they do not fall within the definition of backfitting under § 72.62 or § 50.109(a)(1), they do not impact the issue finality provisions applicable to combined licenses under 10 CFR part 52, and they do not impact general licensees that are using these systems for the duration of their current general licenses.

Certificate of Compliance No. 1025 for the NAC–MPC System design, as currently listed in § 72.214, ''List of Approved Spent Fuel Storage Casks,'' was initially approved for a 20-year term. This direct final rule would renew the initial certificate and Amendment Nos. 1 through 8, extending their approval period by 40 years. The term certified by the cask's certificate of compliance for a renewed certificate of compliance is the period of time commencing with the most recent certificate of compliance renewal date and ending with the certificate of compliance expiration date. With this renewal, the term certified by the cask's certificate of compliance would change from 20 years to 40 years, with the period of extended operation beginning 20 years after the cask is placed into service. The revision to the certificate of compliance through the renewal consists of the changes in the renewed initial certificate and renewed Amendment Nos. 1 through 8 as previously described, and as set forth in the renewed certificates of compliance and technical specifications. These changes would not affect the use of the NAC–MPC System design for the initial 20-year term for previously loaded casks. The renewed certificates would require implementation of aging

management programs during the period of extended operation, which begins after the storage cask system's initial 20-year service period.

Because the term for the renewal would be longer than the initial term certified by the cask's certificate of compliance, the general licensee's authority to use the cask would be extended and would be no less than 40 years. This change would not add, eliminate, or modify (1) structures, systems, or components of an independent spent fuel storage installation or a monitored retrievable storage installation or (2) the procedures or organization required to operate an independent spent fuel storage installation or a monitored retrievable storage installation.

Renewing these certificates does not fall within the definition of backfit under § 72.62 or § 50.109, or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. General licensees who have loaded these casks, or who load these casks in the future under the specifications of the applicable certificate, may continue to store spent fuel in these systems for the initial 20-year storage period authorized by the original certificate. Extending the certificates' expiration dates for 40 more years and requiring the implementation of aging management programs does not impose any modification or addition to the design of the structures, systems, and components important to safety of a cask system, or to the procedures or organization required to operate the system during this initial 20-year term certified by the cask's certificate of compliance. The aging management programs required to be implemented by this renewal are only required to be implemented after the storage cask system's initial 20-year service period ends.

Because this rulemaking renews the certificates, and because renewal is a separate NRC licensing action voluntarily implemented by vendors or licensees, the renewal of these certificates is not an imposition of new or changed requirements from which these certificate of compliance holders or licensees would otherwise be protected by the backfitting provisions in § 72.62 or § 50.109. Even if renewal of this certificate of compliance cask system design could be considered a backfit, NAC International, Inc., as the certificate of compliance holder and vendor of the casks, is not protected by the backfitting provisions in § 72.62 in this capacity.

NAC International, Inc. is also a general licensee using the NAC–MPC System design under a general license. General licensees, including NAC International, Inc., using the existing systems subject to these renewals would be protected by the backfitting provisions in § 72.62 and § 50.109 if the renewals constituted new or changed requirements. But as previously explained, renewal of the certificates for these systems does not impose such requirements. The general licensees using these certificates of compliance may continue storing material in the NAC–MPC System design for the initial 20-year storage period identified in the applicable certificate or amendment with no changes. If general licensees choose to continue to store spent fuel in the NAC–MPC System design after the initial 20-year period, these general licensees will be required to implement the applicable aging management programs for any cask systems subject to a renewed certificate of compliance, but such continued use is voluntary.

Additionally, the actions in this direct final rule do not impact issue finality provisions applicable to combined licenses under 10 CFR part 52. Currently, there are no NAC–MPC system used at an independent fuel storage installation associated with a nuclear power reactor licensed pursuant to 10 CFR part 52 under the general license granted by § 72.210.

For these reasons, renewing the initial certificate and Amendment Nos. 1 through 8 of Certificate of Compliance No. 1025 does not constitute backfitting under § 72.62 or § 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, the NRC has not prepared a backfit analysis for this rulemaking.

XIII. Congressional Review Act

This direct final rule is not a rule as defined in the Congressional Review Act.

XIV. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

Document	ADAMS accession No./ **Federal Register** citation
Preliminary Certificates of Compliance and Preliminary Conditions for Cask Use and Technical Specifications	
Preliminary Renewed Initial Certificate of Compliance No. 1025	ML22297A272.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Initial Certificate	ML22297A281.
Preliminary Renewed Certificate of Compliance No. 1025, Renewed Amendment No. 1	ML22297A273.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Amendment No. 1	ML22297A282.
Preliminary Renewed Certificate of Compliance No. 1025, Renewed Amendment No. 2	ML22297A274.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Amendment No. 2	ML22297A283.
Preliminary Renewed Certificate of Compliance No. 1025, Renewed Amendment No. 3	ML22297A275.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Amendment No. 3	ML22297A284.
Preliminary Renewed Certificate of Compliance No. 1025, Renewed Amendment No. 4	ML22297A276.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Amendment No. 4	ML22297A285.
Preliminary Renewed Certificate of Compliance No. 1025, Renewed Amendment No. 5	ML22297A277.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Amendment No. 5	ML22297A286.
Preliminary Renewed Certificate of Compliance No. 1025, Renewed Amendment No. 6	ML22297A278.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Amendment No. 6	ML22297A287.
Preliminary Renewed Certificate of Compliance No. 1025, Renewed Amendment No. 7	ML22297A279.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Amendment No. 7	ML22297A288.
Preliminary Renewed Certificate of Compliance No. 1025, Renewed Amendment No. 8	ML22297A280.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Amendment No. 8	ML22297A289.

Document	ADAMS accession No./ **Federal Register** citation
Preliminary Safety Evaluation Report	
Preliminary Final Safety Evaluation Report for Renewal of Initial Certificate and Amendments Nos. 1 through 8, of CoC No. 1025 for the NAC Multi-Purpose Canister.	ML22297A270.
Environmental Documents	
Environmental Assessment for Proposed Rule Entitled, ''Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites.'' (1989).	ML051230231.
''Environmental Assessment and Finding of No Significant Impact for the Final Rule Amending 10 CFR Part 72 License and Certificate of Compliance Terms'' (2010).	ML100710441.
Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel: Final Report (NUREG–2157, Volumes 1 and 2) (2014).	ML14198A440 (package).
''Storage of Spent Fuel In NRC-Approved Storage Casks at Power Reactor Sites'' Final Rule (July 18, 1990)	55 FR 29181.
NAC Multi-Purpose Canister (NAC–MPC) System, Certificate of Compliance No. 1025, Renewal Application Documents	
Preliminary Renewal Package for the NAC–MPC System, CoC 1025	ML22297A269 (package).
NAC International—Submission of a Request to Renew the U.S. Nuclear Regulatory Commission Certificate of Compliance No. 1025 for the NAC–MPC Cask System.	ML19357A178 (package).
NAC International, Inc.—Responses to the Nuclear Regulatory Commission's (NRC) Request for Additional Information for the Request to Renew the NRC Certificate of Compliance No. 1025 for the NAC–MPC Cask System.	ML21231A154 (package).
NAC, Submittal of Responses to the Nuclear Regulatory Commission's (NRC) Request for Additional Information for the Request to Renew the NRC Certificate of Compliance No. 1025 for the NAC–MPC Cask System.	ML22077A831 (package).
Supplement to the Submission of Responses to the Nuclear Regulatory Commission's (NRC) Request for Additional Information for the Request to Renew the NRC Certificate of Compliance No. 1025 for the NAC–MPC Cask System.	ML22203A127.
User Need For Rulemaking For Certificate Of Compliance Renewal, Initial Issue (Amendment Number 0), Amendment Numbers 1 Through 8 To The NAC Multipurpose Canister System.	ML22297A271.
Other Documents	
''Standard Review Plan for Renewal of Specific Licenses and Certificates of Compliance for Dry Storage of Spent Nuclear Fuel.'' NUREG–1927, Revision 1. Washington, DC. June 2016.	ML16179A148.
''Managing Aging Processes in Storage (MAPS) Report.'' Final Report. NUREG–2214. Washington, DC. July 2019	ML19214A111.
''Agreement State Program Policy Statement; Correction'' (October 18, 2017)	82 FR 48535.
Regulatory Guide 3.76, Revision 0, ''Implementation of Aging Management Requirements for Spent Fuel Storage Renewals.'' July 2021.	ML21098A022.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2023–0080.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, Certificate of Compliance No. 1025 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1025.

Initial Certificate Effective Date: April 10, 2000, superseded by Renewed Initial Certificate Effective Date: October 17, 2023.

Amendment Number 1 Effective Date: November 13, 2001, superseded by Renewed Amendment Number 1 Effective Date: October 17, 2023.

Amendment Number 2 Effective Date: May 29, 2002, superseded by Renewed Amendment Number 2 Effective Date: October 17, 2023.

Amendment Number 3 Effective Date: October 1, 2003, superseded by Renewed Amendment Number 3 Effective Date: October 17, 2023.

Amendment Number 4 Effective Date: October 27, 2004, superseded by Renewed Amendment Number 4 Effective Date: October 17, 2023.

Amendment Number 5 Effective Date: July 24, 2007, superseded by Renewed Amendment Number 5 Effective Date: October 17, 2023.

Amendment Number 6 Effective Date: October 4, 2010, superseded by

Renewed Amendment Number 6 Effective Date: October 17, 2023.

Amendment Number 7 Effective Date: March 4, 2019, superseded by Renewed Amendment Number 7 Effective Date: October 17, 2023.

Amendment Number 8 Effective Date: March 4, 2019, superseded by Renewed Amendment Number 8 Effective Date: October 17, 2023.

Safety Analysis Report (SAR) Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the NAC Multi-Purpose Canister System (NAC–MPC System).

Docket Number: 72–1025.

Certificate Expiration Date: May 31, 2020.

Renewed Certificate Expiration Date: April 10, 2060.

Model Number: NAC–MPC System.

* * * * *

Dated: July 18, 2023.

For the Nuclear Regulatory Commission.

Daniel H. Dorman,

Executive Director for Operations.

[FR Doc. 2023–16160 Filed 8–2–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1646; Project Identifier MCAI–2023–00065–T; Amendment 39–22516; AD 2023–15–04]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Embraer S.A. Model ERJ 190–300 and –400 airplanes. This AD was prompted by identification that, during simulations, analysis, and an in-service event of the airplane, a stall warning system activation (*i.e.,* stick shaker) and angle of attack (AOA) limiter engagement may occur in certain vertical gust conditions with specific intensity and frequency. This AD requires revising the Limitations section of the existing airplane flight manual (AFM) to incorporate minimum operating speeds during flight at moderate or severe turbulence conditions, as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 18, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 18, 2023.

The FAA must receive comments on this AD by September 18, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1646; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For ANAC material incorporated by reference in this AD, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br;* website *anac.gov.br/en/.* You may find this material on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2023–1646.

FOR FURTHER INFORMATION CONTACT: Joshua Bragg, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 817–222–5366; *Joshua.K.Bragg@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1646; Project Identifier MCAI–2023–00065–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Joshua Bragg, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 817–222–5366; *Joshua.K.Bragg@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

ANAC, which is the aviation authority for Brazil, has issued ANAC AD 2023–01–01, effective January 18, 2023 (ANAC AD 2023–01–01) (also referred to as the MCAI), to correct an

unsafe condition for all Embraer S.A. Model ERJ 190–300 and –400 airplanes. The MCAI states it has been identified that, during simulations, analysis, and an in-service event of the airplane, a stall warning system activation (*i.e.,* stick shaker) and AOA limiter engagement may occur in certain vertical gust conditions with specific intensity and frequency. These certain vertical gust conditions, in combination with certain weight, speed, and aerodynamic configurations, could cause a nose up movement of the airplane after the stick shaker activation. This unsafe condition, if not addressed, could induce an unexpected airplane response affecting its controllability.

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

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1646.

Related Service Information Under 1 CFR Part 51

ANAC AD 2023–01–01 specifies procedures for revising the Limitations section of the existing AFM to incorporate certain minimum operating speeds during flight at moderate or severe turbulence conditions, or if these conditions can be anticipated. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Requirements of This AD

This AD requires accomplishing the actions specified in ANAC AD 2023–01–01 described previously, except for any differences identified as exceptions in the regulatory text of this AD.

Compliance With AFM Revision

FAA regulations require operators furnish to pilots any changes to the AFM (for example, 14 CFR 121.137), and to ensure the pilots are familiar with the AFM (for example, 14 CFR 91.505). As with any other flightcrew training requirement, training on the updated AFM content is tracked by the operators and recorded in each pilot's training record, which is available for the FAA to review. FAA regulations also require pilots to follow the procedures in the existing AFM including all updates. Section 91.9 of 14 CFR requires that any person operating a civil aircraft must comply with the operating limitations specified in the AFM.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, ANAC AD 2023–01–01 is incorporated by reference in this AD. This AD requires compliance with ANAC AD 2023–01–01 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Service information required by ANAC AD 2023–01–01 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1646 after this AD is published.

FAA's Justification and Determination of the Effective Date

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

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

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

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

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	$0	$85

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a

substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–15–04 S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.): Amendment 39–22516; Docket No. FAA–2023–1646; Project Identifier MCAI–2023–00065–T.

(a) Effective Date

This airworthiness directive (AD) is effective August 18, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Embraer S.A. (Type Certificate previously held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.) Model ERJ 190–300 and –400 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by identification that, during simulations, analysis, and an in-service event of the airplane, a stall warning system activation (*i.e.,* stick shaker) and angle of attack (AOA) limiter engagement may occur in certain vertical gust conditions with specific intensity and frequency. The FAA is issuing this AD to address certain vertical gust conditions, which in combination with certain weight, speed, and aerodynamic configurations, could cause a nose up movement of the airplane after the stick shaker activation. The unsafe condition, if not addressed, could induce an unexpected airplane response affecting its controllability.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Agência Nacional de Aviação Civil (ANAC) AD 2023–01–01, effective January 18, 2023 (ANAC AD 2023–01–01).

(h) Exceptions to ANAC AD 2023–01–01

(1) Where ANAC AD 2023–01–01 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (a) of ANAC AD 2023–01–01 specifies to revise certain information, replace the text ''introduce the following'', with ''incorporate the information in the following''.

(3) The ''Alternative methods of compliance (AMOC)'' section of ANAC AD 2023–01–01 does not apply to this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(j) Additional Information

For more information about this AD, contact Joshua Bragg, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 817–222–5366; *Joshua.K.Bragg@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Agência Nacional de Aviação Civil (ANAC) AD 2023–01–01, effective January 18, 2023.

(ii) [Reserved]

(3) For ANAC AD 2023–01–01, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email: *pac@anac.gov.br;* website *anac.gov.br/en/.* You may find this ANAC AD on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.*

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

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

Issued on July 25, 2023.

Victor Wicklund,

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

[FR Doc. 2023–16384 Filed 8–2–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0937; Project Identifier MCAI–2022–00134–R; Amendment 39–22507; AD 2023–14–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Helicopters Model EC155B1 helicopters. This AD was prompted by reports of failure of the main gearbox (MGB) oil cooling fan hub (fan hub). This AD requires, for helicopters with an affected part (fan hub) installed, using an endoscope, repetitively inspecting the fan hub, including the area around the fan hub attachment screws, for a crack. Depending on the inspection results, this AD requires performing additional inspections and replacing an affected fan hub. This AD

also allows an affected fan hub to be installed on a helicopter if certain actions are accomplished, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 7, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 7, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0937; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For EASA material identified in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–0937.

Other Related Service Information: For Airbus Helicopters service information identified in this AD, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *airbus.com/en/products-services/helicopters/hcare-services/airbusworld.* You may also view this service information at the FAA contact information under *Material Incorporated by Reference* above.

FOR FURTHER INFORMATION CONTACT: Kevin Kung, Aviation Safety Engineer, FAA, 1600 Stewart Ave, Suite 410, Westbury, NY 11590; telephone (781) 238–7244; email: *9-AVS-AIR-BACO-COS@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued a series of EASA ADs with the most recent being EASA AD 2022–0006R2, dated January 31, 2022 (EASA AD 2022–0006R2), to correct an unsafe condition for Airbus Helicopters Model EC 155 B1 helicopters.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Helicopters Model EC155B1 helicopters. The NPRM published in the **Federal Register** on May 12, 2023 (88 FR 30682). The NPRM was prompted by reports of failure of the fan hub.

The NPRM proposed to require, for helicopters with an affected fan hub installed, using an endoscope, repetitively inspecting the fan hub, including the area around the fan hub attachment screws, for a crack. Depending on the inspection results, the NPRM proposed to require performing additional inspections and replacing an affected fan hub. The NPRM also proposed to also allow an affected fan hub to be installed on a helicopter if certain actions proposed in the NPRM have been accomplished as specified in EASA AD 2022–0006R2.

You may examine EASA AD 2022–0006R2 in the AD docket at *regulations.gov* under Docket No. FAA–2023–0937.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0006R2 requires, for helicopters with a certain part-numbered fan hub installed, repetitively inspecting the fan hub, including the area around the fan hub attachment screws, for a crack. EASA AD 2022–0006R2 also requires, if there is a crack, additional inspections, replacing an affected fan hub, and sending certain information to Airbus Helicopters.

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

Other Related Service Information

The FAA also reviewed Airbus Helicopters Alert Service Bulletin No. EC155–05A039, Revision 0, dated January 6, 2022. This service information specifies procedures, using an endoscope, to inspect the fan hub and the fan hub attachment screws for a crack. This service information also specifies procedures to interpret the results of the endoscope inspection; and depending on the results, performing close monitoring, replacing an affected fan hub, and sending certain information to Airbus Helicopters.

Differences Between This AD and the EASA AD

EASA AD 2022–0006R2 requires replacing each affected fan hub with a serviceable fan hub if any crack is detected, whereas this AD requires removing each affected fan hub from service and replacing it with a serviceable fan hub if any crack is detected.

Service information referenced in EASA AD 2022–0006R2 specifies sending certain information, including pictures, to the manufacturer, whereas this AD does not.

Interim Action

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

Costs of Compliance

The FAA estimates that this AD affects 10 helicopters of U.S. registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Inspecting the fan hub, including each fan hub attachment screw, and interpreting the results takes about 1 work-hour for an estimated cost of $85 per inspection and $850 for the U.S. fleet per inspection cycle.

Replacing an affected fan hub with a serviceable fan hub takes about 8 work-hours and parts cost about $7,273 for an estimated cost of $7,953 per fan hub replacement.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–14–07 Airbus Helicopters: Amendment 39–22507; Docket No. FAA–2023–0937; Project Identifier MCAI–2022–00134–R.

(a) Effective Date

This airworthiness directive (AD) is effective September 7, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters Model EC155B1 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6320, Main rotor gearbox.

(e) Unsafe Condition

This AD was prompted by reports of failure of the main gearbox (MGB) oil cooling fan hub (fan hub). The FAA is issuing this AD to inspect for cracks on and around the fan hub. The unsafe condition, if not addressed, could result in an undetected loss of lubrication of the MGB or engine and reduced control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0006R2, dated January 31, 2022 (EASA AD 2022–0006R2).

(h) Exceptions to EASA AD 2022–0006R2

(1) Where EASA AD 2022–0006R2 requires compliance in terms of flight hours, this AD requires using hours time-in-service (TIS).

(2) Where EASA AD 2022–0006R2 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraph (2.2) of EASA AD 2022–0006R2 requires within 50 FH [flight hours] after crack detection around the attachment screw, replace the affected part [fan hub] with a serviceable part, for this AD, within 50 hours TIS after crack detection around the attachment screw, remove the affected fan hub from service, and replace it with a serviceable fan hub.

(4) Where paragraph (3) of EASA AD 2022–0006R2 requires replacing an affected part with a serviceable part before next flight if any crack is detected in any area other than around the attachment screw, for this AD, if any crack is detected in any area other than around the attachment screw, before further flight, remove the affected fan hub from service, and replace it with a serviceable fan hub.

(5) Where the service information referenced in EASA AD 2022–0006R2 specifies to ''make sure that there is no crack,'' this AD requires inspecting the area for a crack.

(6) Where the service information referenced in EASA AD 2022–0006R2 specifies to discard certain parts, this AD requires removing those parts from service.

(7) Where the service information referenced in EASA AD 2022–0006R2 specifies creating a Technical Event and sending certain information to Airbus Helicopters, this AD does not include those requirements.

(8) Where the service information referenced in EASA AD 2022–0006R2 specifies to use tooling, this AD allows the use of equivalent tooling.

(9) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0006R2.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0006R2 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits are prohibited.

(k) Alternative Methods of Compliance (AMOCs)

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

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

(l) Additional Information

For more information about this AD, contact Kevin Kung, Aviation Safety Engineer, FAA, 1600 Stewart Ave, Suite 410, Westbury, NY 11590; telephone (781) 238–7244; email: *9-AVS-AIR-BACO-COS@faa.gov*.

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0006R2, dated January 31, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0006R2, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website at: *ad.easa.europa.eu.*

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

information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on July 27, 2023.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–16554 Filed 8–2–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1043; Project Identifier MCAI–2022–01295–E; Amendment 39–22515; AD 2023–15–03]

RIN 2120–AA64

Airworthiness Directives; Safran Helicopter Engines, S.A. Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Safran Helicopter Engines, S.A. (Safran) Model Arrius 2B2 engines. This AD is prompted by the manufacturer revising the airworthiness limitations section (ALS) of the existing engine maintenance manual (EMM), introducing new and more restrictive tasks and limitations for certain life-limited parts. This AD requires revising the ALS of the existing EMM or instructions for continued airworthiness (ICA) and the existing approved maintenance or inspection program, as applicable, by incorporating the actions and associated thresholds and intervals, including life limits, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference (IBR). The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 7, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 7, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1043; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact EASA, Konrad-denauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–1043.

FOR FURTHER INFORMATION CONTACT: Kevin Clark, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7088; email: *kevin.m.clark@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Safran Model Arrius 2B2 engines. The NPRM published in the **Federal Register** on May 15, 2023 (88 FR 30911). The NPRM was prompted by EASA AD 2022–0203, dated September 30, 2022 (EASA AD 2022–0203), issued by EASA, which is the Technical Agent for the Member States of the European Union (also referred to as the MCAI). The MCAI states that the manufacturer published a revised ALS introducing new and more restrictive tasks and limitations for certain life-limited parts. The more restrictive tasks and limitations include replacing life-limited parts before exceeding the applicable life limit, performing applicable maintenance tasks, and revising the approved aircraft maintenance program.

In the NPRM, the FAA proposed to require accomplishing the actions specified in the MCAI described previously. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1043.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0203, which specifies instructions for accomplishing the actions specified in the applicable ALS, including replacing life-limited parts, performing maintenance tasks, and revising the existing approved aircraft maintenance program by incorporating the limitations, tasks, and associated thresholds and intervals described in the ALS.

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

Differences Between This AD and the MCAI

Paragraph (1) of EASA AD 2022–0203 requires replacing each component before exceeding the applicable life limit and, within the thresholds and intervals, accomplishing all applicable maintenance tasks after its effective date, this AD requires revising the ALS of the existing EMM or ICA and the existing approved maintenance or inspection program, as applicable, by incorporating the actions specified in paragraph (1) of EASA AD 2022–0203, within 90 days after the effective date of this AD. This AD does not require compliance with paragraphs (2) through (5) of EASA AD 2022–0203.

Costs of Compliance

The FAA estimates that this AD affects 185 engines installed on helicopters of U.S. registry.

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

Estimated Costs

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise the ALS	1 work-hour × $85 per hour = $85	$0	$85	$15,725

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–15–03 Safran Helicopter Engines, S.A.: Amendment 39–22515; Docket No. FAA–2023–1043; Project Identifier MCAI–2022–01295–E.

(a) Effective Date

This airworthiness directive (AD) is effective September 7, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Safran Helicopter Engines, S.A. Model Arrius 2B2 engines.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by the manufacturer revising the airworthiness limitations section (ALS) of the existing engine maintenance manual (EMM), introducing new and more restrictive tasks and limitations for certain life-limited parts. The FAA is issuing this AD to prevent failure of life-limited parts. The unsafe condition, if not addressed, could result in failure of one or more engines, loss of thrust control, and loss of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Within 90 days after the effective date of this AD, revise the ALS of the existing EMM or instructions for continued airworthiness and the existing approved maintenance or inspection program, as applicable, by incorporating the actions specified in paragraph (1) of European Union Aviation Safety Agency (EASA) AD 2022–0203, dated September 30, 2022 (EASA AD 2022–0203).

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

(h) Provisions for Alternative Actions and Intervals

After the actions required by paragraph (g) of this AD have been done, no alternative actions and associated thresholds and intervals, including life limits, are allowed unless they are approved as specified in the provisions of the ''Ref. Publication'' section of EASA AD 2022–0203.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Additional Information

For more information about this AD, contact Kevin Clark, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7088; email: *kevin.m.clark@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency AD 2022–0203, dated September 30, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0203, contact EASA, Konrad Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on July 25, 2023.

Victor Wicklund,

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

[FR Doc. 2023–16539 Filed 8–2–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1636; Project Identifier MCAI–2023–00369–T; Amendment 39–22514; AD 2023–15–02]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Embraer S.A. Model ERJ 190–300 and –400 airplanes. This AD was prompted by reports of missing parts on the main landing gear (MLG) side stay upper spindle assembly. This AD requires inspection of the left-hand (LH) and right-hand (RH) MLG side stay upper spindle assembly attachments, and corrective actions if necessary, as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 18, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publications listed in this AD as of August 18, 2023.

The FAA must receive comments on this AD by September 18, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1636; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br;* website *anac.gov.br/en/.* You may find this material on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2023–1636.

FOR FURTHER INFORMATION CONTACT: Joshua Bragg, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 216–316–6418; email *joshua.k.bragg@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1636; Project Identifier MCAI–2023–00369–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Joshua Bragg, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 216–316–6418; email *joshua.k.bragg@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

ANAC, which is the aviation authority for Brazil, has issued ANAC AD 2023–02–02R1, effective May 10, 2023 (ANAC AD 2023–02–02R1) (also referred to as the MCAI), to correct an unsafe condition for certain Embraer S.A. Model ERJ 190–300 and –400 airplanes. The MCAI states that it was prompted by reports of missing parts on the main landing gear (MLG) side stay upper spindle assembly, which may compromise the locking and holding of the MLG side stay in its correct kinematics position.

The FAA is issuing this AD to address a possible failure of MLG locking elements, which could cause non-annunciated loss of downlocking capability and collapse of the MLG structure during takeoff or landing.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1636.

Related Service Information Under 1 CFR Part 51

ANAC AD 2023–02–02R1 specifies procedures for a general visual inspection of the LH and RH MLG side stay upper spindle assembly attachments to determine if certain bolts, washers, locknuts, and cotter pins are correctly installed; a detailed inspection to measure the clearance between the spindle shoulder and the bushing flange and the clearance between the bushing flange and the washer on the MLG side stay upper spindle; and corrective actions including replacement with new parts and removal, reinstallation, and retorquing of the MLG side stay upper spindle. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Requirements of This AD

This AD requires accomplishing the actions specified in ANAC AD 2023–02–02R1 described previously, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, ANAC AD 2023–02–02R1 is incorporated by reference in this AD. This AD requires compliance with ANAC AD 2023–02–02R1 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Service information required by ANAC AD 2023–02–02R1 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1636 after this AD is published.

FAA's Justification and Determination of the Effective Date

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

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

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

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

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	$0	$85

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
2 work-hours × $85 per hour = $170	* $0	$170

* Operator supplied parts that are in existing inventory, non-significant cost.

Authority for This Rulemaking

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

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

develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–15–02 Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.): Amendment 39–22514; Docket No. FAA–2023–1636; Project Identifier MCAI–2023–00369–T.

(a) Effective Date

This airworthiness directive (AD) is effective August 18, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Embraer S.A. Model ERJ 190–300 and –400 airplanes, certificated in any category, as identified in Agência Nacional de Aviação Civil (ANAC) AD 2023–02–02R1, effective May 10, 2023 (ANAC AD 2023–02–02R1).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of missing parts on the main landing gear (MLG) side stay upper spindle assembly. The FAA is issuing this AD to address a possible failure of MLG locking elements, which could cause non-annunciated loss of downlocking capability and collapse of the MLG structure during takeoff or landing.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, ANAC AD 2023–02–02R1.

(h) Exceptions to ANAC AD 2023–02–02R1

(1) Where ANAC AD 2023–02–02R1 refers to ''01 Mar. 2023, the effective date of the original issue of this AD,'' this AD requires using the effective date of this AD.

(2) Where ANAC AD 2023–02–02R1 refers to its effective date, this AD requires using the effective date of this AD.

(3) The ''Alternative methods of compliance (AMOC)'' section of ANAC AD 2023–02–02R1 does not apply to this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(j) Additional Information

For more information about this AD, contact Joshua Bragg, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 216–316–6418; email *joshua.k.bragg@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Agência Nacional de Aviação Civil (ANAC) AD 2023–02–02R1, effective May 10, 2023.

(ii) [Reserved]

(3) For ANAC AD 2023–02–02R1, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email: *pac@anac.gov.br;* internet *anac.gov.br/en/.* You may find this ANAC AD on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.*

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

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

Issued on July 19, 2023.

Victor Wicklund,

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

[FR Doc. 2023–16383 Filed 8–2–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1038; Project Identifier MCAI–2022–01584–T; Amendment 39–22509; AD 2023–14–09]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2022–17–09, which applied to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2022–17–09 continued to require the actions of AD 2021–16–03 and required a modification to restore two independent layers of lightning strike protection. This AD was prompted by reports of the incorrect application of lightning strike edge glow sealant protection at specific locations on the wing tanks, and a determination that additional airplanes need to perform a modification to restore two independent

layers of lightning strike protection on the wing lower or upper cover. This AD continues to require the actions in AD 2022–17–09, and also requires restoring the two independent layers of lightning strike protection; as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 7, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 7, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1038; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2023–1038.

FOR FURTHER INFORMATION CONTACT: Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7317; email: *dat.v.le@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2022–17–09, Amendment 39–22147 (87 FR 64375, October 25, 2022) (AD 2022–17–09). AD 2022–17–09 applied to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2022–17–09 continued to require the actions of AD 2021–16–03, Amendment 39–21665 (86 FR 47555, August 26, 2021) (an inspection for missing or incorrect application of the lightning strike edge glow sealant protection at certain locations in the wing tanks, and corrective action), and required a modification to restore two independent layers of lightning strike protection. The FAA issued AD 2022–17–09 to address missing or incorrectly applied sealant, which in combination with an undetected incorrect installation of an adjacent fastener and a lightning strike in the immediate area, could result in ignition of the fuel-air mixture inside the affected fuel tanks and loss of the airplane.

The NPRM published in the **Federal Register** on May 15, 2023 (88 FR 30914). The NPRM was prompted by AD 2022–0250, dated December 14, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0250) (also referred to as the MCAI). The MCAI states that occurrences have been reported from the A350 production line of missing or incorrect application of the lightning strike edge glow sealant protection at specific locations on the wing tanks. This sealant provides the second layer or protection to prevent stringer edge glow in case of lightning strike. This condition, if not addressed, combined with a pre-existing undetected incorrect installation of an adjacent fastener, could create an ignition source for the fuel vapor inside the tanks, which, in case of a lightning strike of high intensity in the immediate area, could result in ignition of the fuel-air mixture in the affected fuel tank and consequent loss of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1038.

In the NPRM, the FAA proposed to continue to require the actions in AD 2022–17–09 and require restoring the two independent layers of lightning strike protection, as specified in EASA AD 2022–0250. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0250 specifies procedures for an inspection for missing or incorrect application of the lightning strike edge glow sealant protection at certain locations in the wing tanks (discrepancies), and corrective action. Corrective actions include applying sealant in areas where sealant was found to be missing or incorrectly applied. EASA AD 2022–0250 also specifies procedures for a modification to restore two independent layers of lightning strike protection on the wing lower or upper cover. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 31 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2022–17–09.	Up to 122 work-hours × $85 per hour = $10,370.	Up to $500	Up to $10,870	Up to $336,970.

ESTIMATED COSTS FOR REQUIRED ACTIONS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
New actions (modification)	Up to 103 work-hours × $85 per hour = $8,775.	$500	Up to $9,255	Up to $286,905.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	$0	$85

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2022–17–09, Amendment 39–22147 (87 FR 64375, October 25, 2022); and

■ b. Adding the following new AD:

2023–14–09 Airbus SAS: Amendment 39–22509; Docket No. FAA–2023–1038; Project Identifier MCAI–2022–01584–T.

(a) Effective Date

This airworthiness directive (AD) is effective September 7, 2023.

(b) Affected ADs

This AD replaces AD 2022–17–09, Amendment 39–22147 (87 FR 64375, October 25, 2022) (AD 2022–17–09).

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0250, dated December 14, 2022 (EASA AD 2022–0250).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of the incorrect application of lightning strike edge glow sealant protection at specific locations on the wing tanks, and a determination that additional airplanes need to perform a modification to restore two independent layers of lightning strike protection on the wing lower or upper cover. The FAA is issuing this AD to address missing or incorrectly applied sealant, which in combination with an undetected incorrect installation of an adjacent fastener and a lightning strike in the immediate area, could result in ignition of the fuel-air mixture inside the affected fuel tanks and loss of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0250.

(h) Exceptions to EASA AD 2022–0250

(1) Where EASA AD 2022–0250 refers to October 27, 2020 (the effective date of EASA AD 2020–0220), this AD requires using September 30, 2021 (the effective date of AD 2021–16–03, Amendment 39–21665 (86 FR 47555, August 26, 2021)).

(2) Where EASA AD 2022–0250 refers to February 4, 2022 (the effective date of EASA AD 2022–0011), this AD requires using November 29, 2022 (the effective date of AD 2022–17–09).

(3) Where EASA AD 2022–0250 refers to its effective date, this AD requires using the effective date of this AD.

(4) Where paragraph (1) of EASA AD 2022–0250 gives a compliance time of ''the next scheduled maintenance tank entry, or before exceeding 78 months since Airbus date of manufacture, whichever occurs first after 27 October 2020 [the effective date of EASA AD 2020–0220],'' for this AD, the compliance time is the later of the times specified in paragraphs (h)(4)(i) and (ii) of this AD.

(i) The next scheduled maintenance tank entry, or before exceeding 78 months since Airbus date of manufacture, whichever occurs first after September 30, 2021 (the effective date of AD 2021–16–03).

(ii) Within 12 months after September 30, 2021 (the effective date of AD 2021–16–03).

(5) Where paragraph (3) of EASA AD 2022–0250 gives a compliance time of ''the next scheduled maintenance tank entry, or before exceeding 78 months since Airbus date of manufacture, whichever occurs first after 04 February 2022 [the effective date of EASA AD 2022–0011],'' for this AD, the compliance time is the later of the times specified in paragraphs (h)(5)(i) and (ii) of this AD.

(i) The next scheduled maintenance tank entry, or before exceeding 78 months since Airbus date of manufacture, whichever occurs first after November 29, 2022 (the effective date of AD 2022–17–09).

(ii) Within 12 months after November 29, 2022 (the effective date of AD 2022–17–09).

(6) Where paragraph (3) of EASA AD 2022–0250 refers to ''discrepancies,'' for this AD, discrepancies include missing or incorrectly applied sealant.

(7) Where paragraph (4) of EASA AD 2022–0250 gives a compliance time of ''the next scheduled maintenance tank entry, or before exceeding 78 months since Airbus date of manufacture, whichever occurs first after the effective date of this [EASA] AD,'' for this AD, the compliance time is the later of the times specified in paragraphs (h)(7)(i) and (ii) of this AD.

(i) The next scheduled maintenance tank entry, or before exceeding 78 months since Airbus date of manufacture, whichever occurs first after the effective date of this AD.

(ii) Within 2 months after the effective date of this AD.

(8) Where the applicability and group definitions in EASA AD 2022–0250 specify manufacturer serial numbers (MSN) in certain service information, replace the text ''the inspection SB'' with ''Airbus Service Bulletin A350–57–P067, dated September 17, 2020.''

(9) Where the applicability and group definitions in EASA AD 2022–0250 specify MSN in certain service information, replace the text ''the modification SB1'' with ''Airbus Service Bulletin A350–57–P070, Revision 1, dated March 14, 2022.''

(10) Where the applicability and group definitions in EASA AD 2022–0250 specify MSN in certain service information, replace the text ''the modification SB2'' with ''Airbus Service Bulletin A350–57–P072, dated June 24, 2022; Airbus Service Bulletin A350–57–P073, dated June 24, 2022; or Airbus Service Bulletin A350–57–P074, dated June 24, 2022; as applicable.''

(11) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0250.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

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

(j) Additional Information

For more information about this AD, contact Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7317; email: *dat.v.le@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0250, dated December 14, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0250, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on July 13, 2023.

Victor Wicklund,

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

[FR Doc. 2023–16382 Filed 8–2–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0661; Project Identifier MCAI–2022–00737–Q; Amendment 39–22510; AD 2023–14–10]

RIN 2120–AA64

Airworthiness Directives; Ipeco Pilot and Co-Pilot Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2019–21–06, which applied to certain Ipeco Holdings Limited (Ipeco) pilot and co-pilot seats. AD 2019–21–06 required modification and re-identification of the affected seats, initial and repetitive inspections of the affected track lock springs and, depending on the findings, replacement of the track lock springs with a part eligible for installation. Since the FAA issued AD 2019–21–06, the FAA determined the need for a mandatory terminating action to the track lock spring inspections. This AD is prompted by reports of track lock spring failures occurring on affected seats. This AD retains the requirements of AD 2019–21–06. This AD also adds a mandatory terminating action for the initial and repetitive inspections of the affected track lock springs. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 7, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 7, 2023.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of December 12, 2017 (82 FR 51552, November 7, 2017); and December 13, 2019 (84 FR 60325, November 8, 2019).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0661; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Ipeco Holdings Limited, Aviation Way, Southend on Sea, SS2 6UN, United Kingdom; phone: +44 1702 545118; fax: +44 1702 540782; email: *technicalsupport@ipeco.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–0661.

FOR FURTHER INFORMATION CONTACT:

Kevin Kung, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7244; email: *9-AVS-AIR-BACO-COS@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2019–21–06, Amendment 39–19772 (84 FR 60325, November 8, 2019) (AD 2019–21–06). AD 2019–21–06 applied to Ipeco pilot and co-pilot seats with a part number (P/N) listed in Paragraph 1.A., Planning Information, Tables 1 and 2, of Ipeco Service Bulletin (SB) Number 063–25–14, Revision 00, dated August 14, 2018, and Ipeco pilot seat P/N 3A063–0099–01–1 and Ipeco co-pilot seat P/N 3A063–0100–01–1. AD 2019–21–06 was prompted by an MCAI originated by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA issued EASA AD 2018–0262, dated December 6, 2018 (EASA AD 2018–0262), to correct an unsafe condition identified as reports of track lock spring failures occurring on affected seats, including those seats already modified by EASA AD 2016–0256, dated December 16, 2016 (EASA AD 2016–0256). AD 2019–21–06 required modification and re-identification of the affected seats, initial and repetitive inspections of the affected track lock springs and, depending on the findings, replacement of the track lock springs with a part eligible for installation. The FAA issued AD 2019–21–06 to prevent unexpected movement of pilot and co-pilot seats on takeoff and landing.

The NPRM published in the **Federal Register** on April 10, 2023 (88 FR 21114). The NPRM was prompted by United Kingdom (UK) Civil Aviation Authority (CAA) AD G–2022–0011, dated June 9, 2022 (referred to after this as the MCAI), issued by UK CAA, which is the aviation authority for the UK. The MCAI states that occurrences of track lock spring failures continued to be reported, including seats already modified, as instructed by EASA AD 2016–0256. Consequently, the manufacturer published revised service information, which specifies instructions for inspection and replacement, if necessary, of affected track lock springs; and EASA issued EASA AD 2018–0262 to supersede EASA AD 2016–0256, which retained the modification and re-identification; and introduced new instructions to inspect for damage and incorrect installation of the track lock springs and, if necessary, replacement of both track lock springs of the affected seat. The MCAI supersedes EASA AD 2018–0262; removes the previous instructions for modification and re-identification; retains the inspection for damage and incorrect installation of the track lock springs; and introduces new instructions for replacement of the affected track lock springs and lever, and installation of a track lock lever control placard (modification and re-identification) as terminating action.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0661.

In the NPRM, the FAA proposed to retain all of the requirements of AD 2019–21–06. The FAA also proposed to add a mandatory terminating action (modification and re-identification of each affected seat) for the initial and repetitive inspections of the affected track lock springs. The FAA is issuing this AD to prevent unexpected movement of pilot and co-pilot seats on takeoff and landing.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Ipeco SB Number 063–25–15, Issue 2; SB Number 063–25–16, Issue 2; SB Number 063–25–17, Issue 2; and SB Number 063–25–18, Issue 2; all dated March 8, 2022. These SBs provide instructions for removal and replacement of the track lock levers and springs and installation of a track lock lever control placard.

This AD also requires Ipeco SB Number 063–25–08, Revision 00; SB Number 063–25–09, Revision 00; and SB Number 063–25–10, Revision 00; all dated May 31, 2016, which the Director of the Federal Register approved for incorporation by reference as of December 12, 2017 (82 FR 51552, November 7, 2017).

This AD also requires Ipeco SB Number 063–25–14, Revision 00, dated August 14, 2018, which the Director of the Federal Register approved for incorporation by reference as of December 13, 2019 (84 FR 60325, November 8, 2019).

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

Costs of Compliance

The FAA estimates that this AD affects 120 pilot and co-pilot seats installed on, but not limited to, ATR 42 and ATR 72 airplanes of U.S. registry. The FAA estimates that seats installed on 34 ATR 42 airplanes and seats installed on 21 ATR 72 airplanes require modification and inspection.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect ATR 42 or ATR 72 flight crew seats	0.25 work-hours × $85 per hour = $21.25	$0	$21.25	$2,550
Modify ATR 42 or ATR 72 flight crew seats	2 work-hours × $85 per hour = $170	56	226	27,120
Report results of ATR 42 or ATR 72 inspection.	1 work-hour × $85 per hour = $85	0	85	10,200
Modify ATR 42 or ATR 72 flight crew seats per mandatory terminating action.	2.5 work-hours × $85 per hour = $212.50	56	268.50	32,220

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Remove seat and replace ATR 42 track lock spring	1.5 work-hours × $85 per hour = $127.50	$28	$155.50
Remove seat and replace ATR 72 track lock spring	1.5 work-hours × $85 per hour = $127.50	28	155.50

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

Paperwork Reduction Act

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2019–21–06, Amendment 39–19772 (84 FR 60325, November 8, 2019); and

■ b. Adding the following new airworthiness directive:

2023–14–10 Ipeco Holdings Limited: Amendment 39–22510; Docket No. FAA–2023–0661; Project Identifier MCAI–2022–00737–Q.

(a) Effective Date

This airworthiness directive (AD) is effective September 7, 2023.

(b) Affected ADs

This AD replaces AD 2019–21–06, Amendment 39–19772 (84 FR 60325, November 8, 2019); (AD 2019–21–06).

(c) Applicability

(1) This AD applies to:

(i) Ipeco Holdings Limited (Ipeco) pilot and co-pilot seats with a part number (P/N) listed in Paragraph 1.A., Planning Information, Tables 1 and 2, of Ipeco Service Bulletin (SB) Number 063–25–14, Revision 00, dated August 14, 2018, and

(ii) Ipeco pilot seat P/N 3A063–0099–01–1 and Ipeco co-pilot seat P/N 3A063–0100–01–1.

(2) These seats are installed on, but not limited to, ATR–GIE Avions de Transport Régional ATR 42 and ATR 72 airplanes.

(d) Subject

Joint Aircraft System Component (JASC) Code 2510, Flight Compartment Equipment.

(e) Unsafe Condition

This AD was prompted by reports of track lock spring failures occurring on affected seats. The FAA is issuing this AD to prevent unexpected movement of pilot and co-pilot seats on takeoff and landing. The unsafe condition, if not addressed, could result in reduced control of the airplane.

(f) Compliance

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

(g) Retained Modification and Re-Identification of Seats, Inspections and Replacement of Track Lock Spring, and Reporting With No Changes

This paragraph retains the requirements of paragraph (g) of AD 2019–21–06, with no changes.

(1) For seats that have not installed the track lock spring modification kit, within two years after December 12, 2017 (the effective date of AD 2017–22–02, Amendment 39–19082 (82 FR 51552, November 7, 2017)), modify and re-identify each affected pilot and co-pilot seat using the Accomplishment Instructions of Ipeco SB Number 063–25–08, Revision 00; Ipeco SB Number 063–25–09, Revision 00; or Ipeco SB Number 063–25–10, Revision 00; all dated May 31, 2016, as applicable to each affected seat.

(2) For all affected seats:

(i) Within 750 flight hours (FHs) after December 13, 2019 (the effective date of AD 2019–21–06), and, thereafter at intervals not to exceed 750 FHs, inspect the track lock spring of each seat in accordance with the Accomplishment Instructions, paragraph 3.2, of Ipeco SB Number 063–25–14, Revision 00, dated August 14, 2018.

(ii) If, during any inspection as required by paragraph (g)(2)(i) of this AD, any damage on, or incorrect installation of, any track lock spring is found on the pilot or co-pilot seat, before further flight, replace both track lock springs of the affected seat with a part eligible for installation using the Accomplishment Instructions, paragraph 3.3.3.1 or 3.3.3.2, as applicable, of Ipeco SB Number 063–25–14, Revision 00, dated August 14, 2018.

(3) Within 30 days after the initial and repetitive inspections, and thereafter for two years after December 13, 2019 (the effective date of AD 2019–21–06), send the inspection results, including no findings, to Ipeco at *technicalsupport@ipeco.com.*

(h) New Mandatory Terminating Action

As a mandatory terminating action to the inspections required by paragraph (g)(2)(i) of this AD, within 12 months after the effective date of this AD, or at the next Base Maintenance check, whichever occurs later, modify and re-identify each affected seat in accordance with the Accomplishment Instructions of Ipeco SB Number 063–25–15, Issue 2; SB Number 063–25–16, Issue 2; SB Number 063–25–17, Issue 2; or SB Number 063–25–18, Issue 2; all dated March 8, 2022, as applicable to each affected seat.

(i) Installation Prohibition

After the effective date of this AD, do not install any pilot or co-pilot seat identified in paragraph (c)(1)(i) of this AD unless the seat is modified and re-identified as specified in paragraph (g)(1) of this AD.

(j) Definitions

(1) For the purpose of this AD, ''damage'' includes cracks, breaks, corrosion, or deformation of the track lock spring.

(2) For the purpose of this AD, ''incorrect installation'' is an installed track lock spring that is at an angle or position different from the angle or position shown in Figures 6 and 7 of Ipeco SB Number 063–25–14, Revision 00, dated August 14, 2018.

(3) For the purpose of this AD, a ''part eligible for installation'' is:

(i) A modified seat provided, before installation, it has passed an inspection (no damage is found); and

(ii) A track lock spring provided that it passed an inspection (no damage is found).

(k) Credit for Previous Actions

You may take credit for the actions required by paragraph (g)(2)(ii) of this AD if the actions were performed before the effective date of this AD using ATR SB No. ATR42–25–0191, Original Issue, dated July 4, 2016; ATR SB No. ATR42–25–0191, Revision No. 01, dated July 20, 2016; or ATR SB No. ATR72–25–1157, Revision No. 02, dated March 9, 2017.

(l) Special Flight Permits

Special flight permits are prohibited.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (n)(2) of this AD.

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

(n) Additional Information

(1) Refer to United Kingdom (UK) Civil Aviation Authority (CAA) AD G–2022–0011, dated June 9, 2022, for related information. This UK CAA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–0661.

(2) For more information about this AD, contact Kevin Kung, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7244; email: *9-AVS-AIR-BACO-COS@faa.gov.*

(o) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on September 7, 2023.

(i) Ipeco Service Bulletin (SB) Number 063–25–15, Issue 2, dated March 8, 2022.

(ii) Ipeco SB Number 063–25–16, Issue 2, dated March 8, 2022.

(iii) Ipeco SB Number 063–25–17, Issue 2, dated March 8, 2022.

(iv) Ipeco SB Number 063–25–18, Issue 2, dated March 8, 2022.

(4) The following service information was approved for IBR on December 13, 2019 (84 FR 60325, November 8, 2019).

(i) Ipeco SB Number 063–25–14, Revision 00, dated August 14, 2018.

(ii) [Reserved]

(5) The following service information was approved for IBR on December 12, 2017 (82 FR 51552, November 7, 2017).

(i) Ipeco SB Number 063–25–08, Revision 00, dated May 31, 2016.

(ii) Ipeco SB Number 063–25–09, Revision 00, dated May 31, 2016.

(iii) Ipeco SB Number 063–25–10, Revision 00, dated May 31, 2016.

(6) For Ipeco service information identified in this AD, contact Ipeco Holdings Limited, Aviation Way, Southend On Sea, SS2 6UN, United Kingdom; phone: +44 1702 545118; email: *technicalsupport@ipeco.com.*

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

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

Issued on July 13, 2023.

Victor Wicklund,

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

[FR Doc. 2023–16540 Filed 8–2–23; 8:45 am]

BILLING CODE 4910–13–P

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

32 CFR Part 1700

Procedures for Disclosure of Records Pursuant to the Freedom of Information Act

Correction

In rule document 2023–15512, appearing on pages 48725 through 48731 in the issue of Friday, July 28, 2023, make the following correction:

§ 1700.9 Fees. [Corrected]

■ On page 48730, in the second column, on the eighteenth line, ''manual searches for records'' should read, ''(b) With regard to manual searches for records''.

[FR Doc. C1–2023–15512 Filed 8–2–23; 8:45 am]

BILLING CODE 0099–10–D

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Parts 207 and 326

RIN 0710–AB13

Civil Monetary Penalty Inflation Adjustment Rule

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is issuing this final rule to adjust its civil monetary penalties (CMP) under the Rivers and Harbors Appropriation Act of 1922 (RHA), the Clean Water Act (CWA), and the National Fishing Enhancement Act (NFEA) to account for inflation.

DATES: This final rule is effective on August 3, 2023.

FOR FURTHER INFORMATION CONTACT: For the RHA portion, please contact Mr. Paul Clouse at 202–761–4709 or by email at *Paul.D.Clouse@usace.army.mil,* or for the CWA and NFEA portion, please contact Mr. Matt Wilson 202–761–5856 or by email at *Matthew.S.Wilson@usace.army.mil* or access the U.S. Army Corps of Engineers Regulatory Home Page at *https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/.*

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, codified at 28 U.S.C. 2461, note, as amended, requires agencies to annually adjust the level of CMP for inflation to improve their effectiveness and maintain their deterrent effect, as required by the Federal Civil Penalties Adjustment Act Improvements Act of 2015, Public Law 114–74, sec. 701, November 2, 2015 (''Inflation Adjustment Act'').

With this rule, the new statutory maximum penalty levels listed in Table 1 will apply to all statutory civil penalties assessed on or after the effective date of this rule. Table 1 shows the calculation of the 2023 annual inflation adjustment based on the guidance provided by the Office of Management and Budget (OMB) (see December 15, 2022, Memorandum for the Heads of Executive Departments and Agencies, Subject: Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015). The OMB provided to agencies the cost-of-living adjustment multiplier for 2023, based on the Consumer Price Index for All Urban Consumers (CPI–U) for the month of October 2022, not seasonally adjusted, which is 1.07745. Agencies are to adjust ''the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment.'' For 2023, agencies multiply each applicable penalty by the multiplier, 1.07745, and round to the nearest dollar. The multiplier should be applied to the most recent penalty amount, *i.e.,* the one that includes the 2022 annual inflation adjustment.

TABLE 1

Citation	Civil Monetary Penalty (CMP) amount established by law	2022 CMP amount in effect prior to this rulemaking	2022 Inflation adjustment multiplier	CMP Amount as of August 3, 2023
Rivers and Harbors Act of 1922 (33 U.S.C. 555).	$2,500 per violation	$6,270 per violation	1.07745	$6,756 per violation.
CWA, 33 U.S.C. 1319(g)(2)(A)	$10,000 per violation, with a maximum of $25,000.	$23,990 per violation, with a maximum of $59,974.	1.07745	$25,848 per violation, with a maximum of $64,619.
CWA, 33 U.S.C. 1344(s)(4)	Maximum of $25,000 per day for each violation.	Maximum of $59,974 per day for each violation.	1.07745	Maximum of $64,619 per day for each violation.
National Fishing Enhancement Act, 33 U.S.C. 2104(e).	Maximum of $10,000 per violation	Maximum of $26,269 per violation	1.07745	Maximum of $28,304 per violation.

Section 4 of the Inflation Adjustment Act directs federal agencies to publish annual penalty inflation adjustments. In accordance with section 553 of the Administrative Procedures Act (APA), many rules are subject to notice and comment and are effective no earlier than 30 days after publication in the **Federal Register**. Section 4(b)(2) of the Inflation Adjustment Act further provides that each agency shall make the annual inflation adjustments ''notwithstanding section 553'' of the APA. According to the December 2022 OMB guidance issued to Federal agencies on the implementation of the 2023 annual adjustment, the phrase ''notwithstanding section 553'' means that, ''the public procedure the APA generally requires—notice, an opportunity for comment, and a delay in effective date—is not required for agencies to issue regulations implementing the annual adjustment.'' Consistent with the language of the Inflation Adjustment Act and OMB's implementation guidance, this rule is not subject to notice and opportunity for public comment or a delay in effective date. This rule adjusts the value of current statutory civil penalties to reflect and keep pace with the levels originally set by Congress when the statutes were enacted, as required by the Inflation Adjustment Act. This rule will apply prospectively to penalty assessments beginning on the effective date of this final rule.

Regulatory Procedures

Plain Language

In compliance with the principles in the President's Memorandum of June 1, 1998, regarding plain language, this preamble is written using plain language. The use of ''we'' in this notice refers to the Corps and the use of ''you'' refers to the reader. We have also used

the active voice, short sentences, and common everyday terms except for necessary technical terms.

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

This rule is not designated a ''significant regulatory action'' under Executive Order 12866 and OMB determined this rule to not be significant. Moreover, this final rule makes nondiscretionary adjustments to existing civil monetary penalties in accordance with the Inflation Adjustment Act and OMB guidance. The Corps, therefore, did not consider alternatives and does not have the flexibility to alter the adjustments of the civil monetary penalty amounts as provided in this rule.

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

The Department of Defense determined that 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. This action merely increases the level of statutory civil penalties that could be imposed in the context of a federal civil administrative enforcement action or civil judicial case for violations of Corps-administered statutes and implementing regulations.

Executive Order 13132, ''Federalism''

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

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

The Assistant Secretary of the Army (Civil Works) certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Because notice of proposed rulemaking and opportunity for comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act are inapplicable. Therefore, the Regulatory Flexibility Act, as amended, does not require the Corps of Engineers to prepare a regulatory flexibility analysis.

Unfunded Mandates Reform Act (2 U.S.C. Chapter 25)

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

Public Law 104–113, ''National Technology Transfer and Advancement Act (15 U.S.C. Chapter 7)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, (15 U.S.C. 272 note), directs us to use voluntary consensus standards in our regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. This rule does not involve technical standards. Therefore, we did not consider the use of any voluntary consensus standards.

Executive Order 13045, ''Protection of Children From Environmental Health Risks and Safety Risks''

Executive Order 13045 applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives. This rule is not subject to this Executive Order because it is not economically significant as defined in Executive Order 12866. In addition, it does not concern an environmental or safety risk that we have reason to believe may have a disproportionate effect on children.

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

Executive Order 13175 requires agencies to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The phrase ''policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule does not have tribal implications. The rule imposes no new substantive obligations on tribal governments. Therefore, Executive Order 13175 does not apply to this rule.

Public Law 104–121, ''Congressional Review Act,'' (5 U.S.C. Chapter 8)

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Executive Order 12898, ''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations''

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities

because of their race, color, or national origin. This rule merely adjusts civil penalties to account for inflation, and therefore, is not expected to negatively impact any community, and therefore is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities.

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''

This rule is not a ''significant energy action'' as defined in Executive Order 13211 because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

33 CFR Part 207

Navigation (water), Penalties, Reporting and recordkeeping requirements, and Waterways.

33 CFR Part 326

Administrative practice and procedure, Intergovernmental relations, Investigations, Law enforcement, Navigation (water), Water pollution control, and Waterways.

Approved by:

Michael L. Connor,

Assistant Secretary of the Army, (Civil Works).

For the reasons set out in the preamble, title 33, chapter II, part 207 of the Code of Federal Regulations is amended as follows:

PART 207—NAVIGATION REGULATIONS

■ 1. The authority citation for part 207 continues to read as follows:

Authority: 33 U.S.C. 1; 33 U.S.C. 555; 28 U.S.C. 2461 note.

■ 2. Amend § 207.800 by revising paragraph (c)(2) to read as follows:

§ 207.800 Collection of navigation statistics.

* * * * *

(c) * * *

(2) In addition, any person or entity that fails to provide timely, accurate, and complete statements or reports required to be submitted by the regulation in this section may also be assessed a civil penalty of up to $6,756 per violation under 33 U.S.C. 555, as amended.

* * * * *

PART 326—ENFORCEMENT

■ 3. The authority citation for part 326 continues to read as follows:

Authority: 33 U.S.C. 401 *et seq.;* 33 U.S.C. 1344; 33 U.S.C. 1413; 33 U.S.C. 2104; 33 U.S.C. 1319; 28 U.S.C. 2461 note.

■ 4. Amend § 326.6 by revising paragraph (a)(1) to read as follows:

§ 326.6 Class I administrative penalties.

(a) * * *

(1) This section sets forth procedures for initiation and administration of Class I administrative penalty orders under Section 309(g) of the Clean Water Act, judicially-imposed civil penalties under Section 404(s) of the Clean Water Act, and Section 205 of the National Fishing Enhancement Act. Under Section 309(g)(2)(A) of the Clean Water Act, Class I civil penalties may not exceed $25,848 per violation, except that the maximum amount of any Class I civil penalty shall not exceed $64,619. Under Section 404(s)(4) of the Clean Water Act, judicially-imposed civil penalties may not exceed $64,619 per day for each violation. Under Section 205(e) of the National Fishing Enhancement Act, penalties for violations of permits issued in accordance with that Act shall not exceed $28,304 for each violation.

TABLE 1 TO PARAGRAPH (a)(1)

Environmental statute and U.S. code citation	Statutory civil monetary penalty amount for violations that occurred after November 2, 2015, and are assessed on or after August 3, 2023
Clean Water Act (CWA), Section 309(g)(2)(A), 33 U.S.C. 1319(g)(2)(A)	$25,848 per violation, with a maximum of $64,619.
CWA, Section 404(s)(4), 33 U.S.C. 1344(s)(4)	Maximum of $64,619 per day for each violation.
National Fishing Enhancement Act, Section 205(e), 33 U.S.C. 2104(e)	Maximum of $28,304 per violation.

* * * * *

[FR Doc. 2023–16025 Filed 8–2–23; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 38

RIN 2900–AR80

Persons Eligible for Burial

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is revising its regulations regarding persons eligible for interment in a national cemetery, documentation associated with requests for interment, and eligibility for headstones or markers to implement new authorities provided in the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY22). Section 6601 of NDAA FY22 expanded eligibility for interment in national cemeteries to include certain individuals who served with a special guerrilla unit or irregular forces operating from a base in Laos in support of the Armed Forces during a specified time period. VA is amending its regulations to reflect this expanded eligibility.

DATES: This rule is effective September 5, 2023.

FOR FURTHER INFORMATION CONTACT: Daniel Catron, Supervisory Program Analyst, National Cemetery Administration, 41B2, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Telephone: (314) 416–6324. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: On February 16, 2023, VA published a proposed rule in the **Federal Register** (88 FR 10065) that proposed to revise VA regulations regarding persons eligible for interment in a national cemetery, documentation associated with requests for interment, and eligibility for headstones or markers. The public comment period ended on April 17, 2023, and VA received six comments in response to the proposed rule.

Technical Correction

During the final rule drafting process, VA noted an inaccuracy in proposed 38 CFR 38.619(a)(2)(i)(A), which we corrected in this final rule. In the proposed rule, we drafted the last sentence of the paragraph to read: ''VA will retrieve naturalization records from the U.S. Citizenship and Immigration Services to verify that the naturalization was pursuant to section 2(1) of the Act.'' We clarify that VA verifies

naturalization with the U.S. Citizenship and Immigration Services, but we do not receive or maintain naturalization records used for eligibility determinations. For this reason, the corrected language reads: ''VA will verify with the U.S. Citizenship and Immigration Services that the naturalization was pursuant to section 2(1) of the Act.'' This correction does not alter the process reflected by that paragraph nor does it affect the public in any way.

Public Comment Analysis

Two commenters provided very brief remarks stating their support for expanding eligibility for burial in a VA national cemetery but made no specific mention of the proposed rule itself or the regulatory language. VA appreciates the supportive comments; however, we note that eligibility for burial was expanded to this special group of persons by Congress and was not a result of the rulemaking. Since the commenters raised no questions or concerns and suggested no changes to the proposed regulatory implementation, VA will make no changes to the proposed regulatory text based on these comments.

Another commenter provided a brief statement of support for expanding burial eligibility and noted the criteria for eligibility and documentary evidence outlined in the rulemaking was clear. The commenter stated support for the rule, which VA appreciates. Since the commenter raised no questions or concerns and suggested no changes to the proposed regulatory implementation, VA will make no changes to the proposed regulatory text based on these comments.

One commenter provided a statement of support for the rule, but also questioned why non-citizens should be excluded from the rule. At the outset, we note that this rule includes not just individuals who became United States citizens, but also non-citizens lawfully admitted for permanent residence in the United States at the time of their death. In any event, this decision to focus on citizenship and permanent residency was Congress's, not VA's. 38 U.S.C. 2402(a)(10). This rule simply implements an extension of eligibility that Congress has legislated.

Moreover, while the commenter asserts that it is arbitrary to discriminate against non-citizen veterans, that assertion is premised on a misunderstanding of the definition of ''veteran.'' For VA benefit purposes, ''veteran'' is defined at 38 U.S.C. 101(2) and requires service in the active military, naval, air, or space service in the United States Armed Forces. The individuals at issue here, who served with a special guerrilla unit or irregular forces operating from a base in Laos, were not members of the United States Armed Forces and do not meet the definition of ''veteran'' for VA benefit purposes. And while Congress has included them as eligible for burial in 38 U.S.C. 2402(a)(10), Congress also provided certain qualifications related to citizenship and residency status at the time of death. We appreciate this commenter's concerns but will make no changes to the regulation based on this comment.

Another commenter stated support for the proposed rule but expressed concern that the rule does not specify how the documentation provided as evidence of service in support of a request for burial will be verified. The commenter suggested that the rule should specify how evidence will be corroborated and that VA should set a low standard for this matter so that people who have honorably served our country should get the benefit of the doubt. The commenter asserted that expanding the criteria that VA will use to evaluate the strength of evidence would be helpful for decedent representatives in gathering the documentation. Similarly, another commenter requested that evidence submitted by families of individuals who served with a special guerrilla unit or irregular forces be added explicitly to the types of documentation that VA will accept as evidence of service.

To the extent these comments are predicated on the possible difficulties in obtaining official government documentation as proposed in § 38.619(a)(2)(ii)(A), or obtaining affidavits of the decedent's superior officer, or two other individuals who also served and knew of the decedent's service as proposed in § 38.619(a)(2)(ii)(B) and (C), that is why VA included § 38.619(a)(2)(ii)(D) in the proposed (and this final) rule. This provision constitutes confirmation that VA will accept other appropriate evidence as proof of service for these individuals. Moreover, in considering the issue, VA will provide assistance and give claimants the benefit of the doubt, in accord with its statutory duties. 38 U.S.C. 5103A, 5107(b).

As explained in the proposed rule, VA recognizes the challenge of verifying an individual's service with a special guerilla unit or irregular forces operating from a base in Laos in support of the Armed Forces between February 28, 1961, and May 7, 1975. No U.S. government agency has records of such service. So, VA is implementing the same evidentiary requirement Congress outlined in section 4 of the Hmong Veterans Naturalization Act of 2000, Public Law 106–207, which permits VA to consider any ''appropriate proof'' of qualifying service.

Again, to the extent the commenter had concerns over interpretations or assumptions regarding the type of evidence allowed in proposed § 38.619(a)(2)(ii)(D), VA confirms here that the regulatory text allows for the consideration of all appropriate evidence that factually documents the service, location and dates served. Because this provision is broad, we will make no changes to the regulatory text based on these comments.

Executive Orders 12866, 13563 and 14094

Executive Order 12866 (Regulatory Planning and Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The factual basis for this certification is the fact that the rule simply describes a new category of persons eligible for interment in national cemeteries and the associated documentation to substantiate eligibility. Therefore, pursuant to 5

U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule includes provisions constituting a revised collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA submitted a copy of this rulemaking action to OMB for review and approval. OMB has reviewed and approved this revised collection of information.

Congressional Review Act

Pursuant to Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Assistance Listing

The Assistance Listing numbers and titles for the program affected by this document are 64.201, National Cemeteries; 64.203, Veterans Cemetery Grants Program; and 64.206, VA Outer Burial Receptacle Allowance Program.

List of Subjects in 38 CFR Part 38

Administrative practice and procedure, Cemeteries, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on July 28, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 38 as set forth below:

PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS

■ 1. The authority citation for part 38 is revised to read as follows:

Authority: 38 U.S.C. 107, 501, 512, 531, 2306, 2400, 2402, 2403, 2404, 2407, 2408, 2411, 7105.

■ 2. Amend § 38.619 by adding paragraph (a)(2) to read as follows:

§ 38.619 Requests for interment, committal services or memorial services, and funeral honors.

(a) * * *

(2) *Interment requests pursuant to § 38.620(j).* (i) Consistent with paragraph (a)(1)(i) of this section, interment requests pursuant to § 38.620(j) must include the following:

(A) For decedents who were naturalized under section 2(1) of the Hmong Veterans Naturalization Act of 2000 (the Act), a copy of the official U.S. Certificate of Naturalization. (VA will verify with the U.S. Citizenship and Immigration Services that the naturalization was pursuant to section 2(1) of the Act.)

(B) For decedents who were otherwise naturalized, a copy of the U.S. Certificate of Naturalization and documentation of the decedent's honorable service with a special guerilla unit or irregular forces operating from a base in Laos in support of the Armed Forces at any time between February 28, 1961, and May 7, 1975.

(C) For decedents who were not naturalized but were lawfully admitted for permanent residence in the U.S., a copy of the official documentation of status as a lawful permanent resident, and documentation of the decedent's honorable service with a special guerilla unit or irregular forces operating from a base in Laos in support of the Armed Forces at any time between February 28, 1961, and May 7, 1975.

(D) Evidence that the decedent resided in the U.S. at the time of death.

(ii) VA will accept the following types of documentation as evidence of service described in paragraphs (a)(2)(i)(B) and (C) of this section:

(A) Original documentation issued by a government agency officially documenting the service type, location, and dates served;

(B) An affidavit of the decedent's superior officer attesting to the type of service, location, and dates served;

(C) Two affidavits from other individuals who were also serving with such a special guerilla unit or irregular forces and who personally knew of the decedent's service; or

(D) Other appropriate evidence that factually documents the service, location, and dates served.

(iii) The DD Form 214, Certificate of Release or Discharge from Active Duty, is not an appropriate documentation of service for purposes of paragraphs (a)(2)(i)(B) and (C) of this section.

* * * * *

■ 3. Amend § 38.620 by revising paragraph (j) to read as follows:

§ 38.620 Persons eligible for burial.

* * * * *

(j) Any individual who:

(1) Died on or after March 23, 2018; and

(2) Resided in the United States at the time of their death; and

(3) Either:

(i) Was naturalized pursuant to section 2(1) of the Hmong Veterans' Naturalization Act of 2000 (Pub. L. 106–207, 114 Stat. 316; 8 U.S.C. 1423 note); or

(ii) Served honorably with a special guerilla unit or irregular forces operating from a base in Laos in support of the Armed Forces at any time between February 28, 1961, and May 7, 1975; and was, at the time of the individual's death, a citizen of the United States or an alien lawfully admitted for permanent residence in the United States.

* * * * *

■ 4. Amend § 38.630 by revising paragraphs (a)(1)(ii)(F) and (a)(2)(i)(F) to read as follows:

§ 38.630 Burial headstones and markers; medallions.

(a) * * *

(1) * * *

(ii) * * *

(F) Individuals who were naturalized pursuant to section 2(1) of the Hmong Veterans' Naturalization Act of 2000, or who served honorably with a special guerilla unit or irregular forces operating from a base in Laos in support of the Armed Forces, as described in and subject to § 38.620(j).

* * * * *

(2) * * *

(i) * * *

(F) Individuals who were naturalized pursuant to section 2(1) of the Hmong Veterans' Naturalization Act of 2000, or who served honorably with a special guerilla unit or irregular forces operating from a base in Laos in support of the Armed Forces, as described in and subject to § 38.620(j).

* * * * *

[FR Doc. 2023–16559 Filed 8–2–23; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2021–0427; FRL–8514–03–OAR]

RIN 2060–AV14

Renewable Fuel Standard (RFS) Program: Standards for 2023–2025 and Other Changes; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The Environmental Protection Agency (EPA) is correcting a final rule that appeared in the **Federal Register** on July 12, 2023. The final rule determined the applicable volume requirements and percentage standards for the Renewable Fuel Standard (RFS) for 2023 through 2025 for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel, established the second supplemental standard addressing the judicial remand of the 2016 standard-setting rulemaking, and made several regulatory changes to the RFS program. This document corrects several amendatory instructions in the regulatory text in the final rule, but does not make any substantive changes.

DATES: This correction is effective on September 11, 2023.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2021–0427. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material is not available on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nick Parsons, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4479; email address: *RFS-Rulemakings@epa.gov.*

SUPPLEMENTARY INFORMATION:

EPA is making several corrections for inadvertent errors in the amendatory instructions and regulatory text for the final rule:

- 40 CFR 80.140(a)(8) should be 40 CFR 80.140(a)(7).
- Instruction 17.l removes and replaces the text ''Table 1 to this section, or a D code as approved by the Administrator, which'', but should remove and replace the text ''Table 1 to this section, or D codes as approved by the Administrator, which''.
- Instruction 17.x amends 40 CFR 80.1426(f)(5)(v), but should amend 40 CFR 80.1426(f)(4)(ii).
- Instruction 20.d redesignates 40 CFR 80.1429(b)(5), but should also redesignate 40 CFR 80.1429(b)(5)(i) and (ii).
- Instruction 27.a removes and replaces the text ''the Administrator'' in 40 CFR 80.1443(a), (b), and (e), but should also remove and replace the text ''The Administrator''.
- Instruction 29.b amends 40 CFR 80.1450(b)(1)(ii), but should more specifically amend 40 CFR 80.1450(b)(1)(ii) introductory text.
- Instruction 29.q removes and replaces the text ''The Administrator'' in 40 CFR 80.1450(g)(11)(i), (ii), (iii), and (i)(1), but should also remove and replace the text ''the Administrator''.
- Instruction 33.c removes and replaces the text ''§ 80.1401'' in 40 CFR 80.1453(d) and (f)(1)(vi), but should also remove and replace the text ''40 CFR 80.1401''.
- Instruction 34.i removes 40 CFR 80.1454(d) introductory text, but should instead revise 40 CFR 80.1454(d) introductory text.

Section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical correction final without prior proposal and opportunity for comment because such notice and opportunity for comment is unnecessary as the technical correction is for minor typographical, non-substantive errors only.

Correction

PART 80 [Corrected]

In FR Doc. 2023–13462 appearing at 88 FR 44468 in the **Federal Register** of Wednesday, July 12, 2023, the following corrections are made:

§ 80.140 [Corrected]

■ 1. On page 44571, in the second column, in § 80.140, in paragraph (a), ''(8) *Volume standardization.*'' is corrected to read: ''(7) *Volume standardization.*''.

§ 80.1426 [Corrected]

■ 2. On page 44582, in the second column, amendatory instruction 17.l is corrected to read: ''l. In paragraph (f)(3)(i), removing the text ''Table 1 to this section, or D codes as approved by the Administrator, which'' and adding in its place the text ''the approved pathways that'';''.

■ 3. On page 44582, in the second column, amendatory instruction 17.x is corrected to read: ''x. In paragraph (f)(4)(ii), removing the text ''Table 1 to this section, or a D code as approved by the Administrator, which'' and adding in its place the text ''the approved pathway that'';''.

§ 80.1429 [Corrected]

■ 4. On page 44585, in the first column, amendatory instruction 20.d is corrected to read: ''d. Redesignating paragraphs (b)(5) introductory text, (b)(5)(i), and (b)(5)(ii) as paragraphs (b)(5)(i), (b)(5)(i)(A), and (b)(5)(i)(B), respectively;''.

§ 80.1443 [Corrected]

■ 5. On page 44586, in the second column, amendatory instruction 27.a is corrected to read: ''a. In paragraph (a), removing the text ''the Administrator'' and adding in its place the text ''EPA''; in paragraph (b), removing the text ''The Administrator'' and adding in its place the text ''EPA''; and in paragraph (e) introductory text, removing the text ''the Administrator'' and adding in its place the text ''EPA''; and''.

§ 80.1450 [Corrected]

■ 6. On page 44586, in the second column, amendatory instruction 29.b is corrected to read: ''b. Revising paragraphs (b)(1) introductory text and (b)(1)(ii) introductory text;''.

■ 7. On page 44586, in the second column, amendatory instruction 29.q is corrected to read: ''q. In paragraph (g)(11)(i), removing the text ''The Administrator may issue a notice of intent to revoke the registration of a third-party auditor if the Administrator'' and adding in its place the text ''EPA may issue a notice of intent to revoke the registration of a third-party auditor if EPA''; in paragraph (g)(11)(ii), removing the text ''The Administrator'' and adding in its place the text ''EPA''; and in paragraphs (g)(11)(iii) and (i)(1), removing the text ''the Administrator'' and adding in its place the text ''EPA''.''

§ 80.1453 [Corrected]

■ 8. On page 44589, in the second column, amendatory instruction 33.c is corrected to read: ''c. In paragraph (d), removing the text ''§ 80.1401'' and adding in its place the text ''§ 80.2''; and in paragraph (f)(1)(vi), removing the text ''40 CFR 80.1401'' and adding in its place the text ''§ 80.2'';''

§ 80.1454 [Corrected]

■ 9. On page 44589, in the third column, amendatory instruction 34.i is corrected to read: ''i. Revising paragraph (d) introductory text;''.

Joseph Goffman,

Principal Deputy Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2023–16541 Filed 8–2–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket Nos. 12–375, 23–62; DA 23–638; FR ID [159602]]

2023 Mandatory Data Collection for Incarcerated People's Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final order.

SUMMARY: In this document, the Wireline Competition Bureau and the Office of Economics and Analytics (WCB and OEA) adopt an Order defining the contours and specific requirements of the forthcoming 2023 Mandatory Data Collection for incarcerated people's communications services.

DATES: The Order was adopted and released on July 26, 2023. The effective date of the Order is delayed indefinitely. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

ADDRESSES: You may submit comments, identified by WC Docket Nos. 12–375 and 23–62, by either of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the Electronic Comment Filing System (ECFS): *https://www.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. Currently, the Commission does not accept any hand or messenger delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission adopted a new Protective Order in this proceeding which incorporates all materials previously designated by the parties as confidential. Filings that contain confidential information should be appropriately redacted and filed pursuant to the procedure described in that Order.

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

FOR FURTHER INFORMATION CONTACT: Ahuva Battams, Pricing Policy Division of the Wireline Competition Bureau, at (202) 418–1565 or via email at *ahuva.battams@fcc.gov.* Please copy *mandatorydatacollection@fcc.gov* on any email correspondence.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Order, DA 23–638, released on July 26, 2023. A full-text version of this Order is available at the following internet address: *https://www.fcc.gov/document/2023-ipcs-mandatory-data-collection-order.*

The effective date of the Order is delayed indefinitely. The Commission will publish a document in the **Federal Register** announcing the effective date once the Office of Management and Budget (OMB) has completed any review required by the Paperwork Reduction Act (PRA).

Synopsis

I. Introduction and Background

1. By this Order, the Wireline Competition Bureau (WCB) and the Office of Economics and Analytics (OEA) adopt instructions, a reporting template, and a certification form to implement the 2023 Mandatory Data Collection related to incarcerated people's communications services (IPCS). WCB and OEA's actions today are taken pursuant to the authority delegated to WCB and OEA by the Commission and largely implement the proposals set forth in the *2023 IPCS Mandatory Data Collection Public Notice,* with refinements and reevaluations responsive to record comments. *Rates for Interstate Inmate Calling Services,* Notice of Proposed Rulemaking, 88 FR 27850, May 3, 2023 (*2023 IPCS Mandatory Data Collection Public Notice* or *Public Notice*); *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services,* Delegations of Authority; Reaffirmation and Modification, 88 FR 19001, March 30, 2023 (*2023 IPCS Order*); *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services,* Notice of Proposed Rulemaking, 88 FR 20804, April 7, 2023 (*2023 IPCS Notice*); *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act;* Martha Wright-Reed Act, Public Law number 117–338, 136 Stat. 6156 (Martha Wright-Reed Act or Act).

2. On January 5, 2023, the President signed into law the Martha Wright-Reed Just and Reasonable Communications Act, which expanded the Commission's statutory authority over communications between incarcerated people and the non-incarcerated, including ''any audio or video communications service used by inmates . . . regardless of technology used.'' The new Act also amends section 2(b) of the Communications Act of 1934, as amended (Communications Act), to make clear that the Commission's authority extends to intrastate as well as interstate and international communications services used by incarcerated people.

3. The Martha Wright-Reed Act directs the Commission to ''promulgate any regulations necessary to implement'' the Act, including its mandate that the Commission establish a ''compensation plan'' ensuring that all rates and charges for IPCS ''are just and reasonable,'' not earlier than 18 months and not later than 24 months after the Act's January 5, 2023 enactment. The Act requires the Commission to consider, as part of its implementation, the costs of ''necessary'' safety and security measures, as well as ''differences in costs'' based on facility size or ''other characteristics.'' It also allows the Commission to ''use industry-wide average costs of telephone service and advanced communications services and the average costs of service of a communications service provider'' in determining just and reasonable rates.

4. The Martha Wright-Reed Act contemplates an additional data collection by requiring or allowing the Commission to consider certain types of other costs necessary to its implementation. Prior to the enactment

of the Martha Wright-Reed Act, the Commission had sought provider data related to audio communications services provided to incarcerated persons on three occasions, as part of its ongoing efforts to establish just and reasonable rates for those services, while ensuring that providers are fairly compensated for such services. To ensure that it will have the data it needs to meet its substantive and procedural responsibilities under the Act, the Commission delegated authority to WCB and OEA to ''update and restructure'' its most recent data collection (the Third Mandatory Data Collection) ''as appropriate in light of the requirements of the new statute.'' This delegation requires that WCB and OEA collect ''data on all incarcerated people's communications services from all providers of those services now subject to'' the Commission's authority, including, but not limited to, requesting ''more recent data for additional years not covered by the [Third Mandatory Data Collection].''

5. In accordance with this delegation, WCB and OEA developed proposals for the 2023 Mandatory Data Collection that updated and expanded the instructions and reporting templates from the Third Mandatory Data Collection, and issued a *Public Notice* seeking comments on all aspects of the proposed revisions to the collection. Concurrently, in accordance with the Paperwork Reduction Act of 1995 (PRA), WCB and OEA published a notice in the **Federal Register** seeking comment on potential burdens of the proposed reporting requirements. *Information Collection Being Reviewed by the Federal Communications Commission,* Notice and Request for Comments, 88 FR 27885, May 3, 2023.

6. WCB and OEA received comments from several IPCS providers, public interest advocates, and other interested parties in response to the *Public Notice,* and one comment in response to the PRA notice. WCB and OEA have thoroughly considered all of these filings in adopting the requirements for the final 2023 Mandatory Data Collection.

II. Discussion

A. Implementing the 2023 Mandatory Data Collection

7. Pursuant to their delegated authority, WCB and OEA adopt the 2023 Mandatory Data Collection Instructions, Word and Excel templates, and certification form as proposed in the *Public Notice,* with some exceptions discussed below. Commenters generally support the broad contours and specific requirements of the data collection as proposed and do not challenge the proposal to retain the overall reporting structure and organization of the Third Mandatory Data Collection as the basis for this collection.

8. Commenters offer various suggestions that, in their view, would improve the proposed data collection. In light of these comments, WCB and OEA reevaluate some of their proposals and refine certain aspects of the instructions and templates, as set forth in greater detail below, while retaining the overall structure of the data collection as proposed. These refinements include modifying the treatment of video IPCS and safety and security measures, clarifying the reporting of costs related to site commissions, and revising certain proposed definitions. WCB and OEA conclude that the modifications ''appropriately balance the need for 'detailed and specific instructions and templates' and the desire to avoid unduly burdening providers.''

9. In finalizing the requirements for the data collection, WCB and OEA do not resolve issues pending in the *2023 IPCS Notice* as some commenters propose. Doing so would exceed the authority the Commission delegated to WCB and OEA. The *Public Notice* expressly foreclosed ''seek[ing] additional comment on the questions and other issues previously raised in the *2023 IPCS Notice* or in relevant prior Commission or Bureau notices,'' and WCB and OEA do not address commenters' proposals to the contrary in this Order. Instead, the purpose of the data collection is to provide the Commission with an objective foundation for addressing the issues it must resolve to implement the Martha Wright-Reed Act.

10. In the sections that follow, WCB and OEA first address the overall scope of the data collection and then turn to proposals to revise specific instructions.

B. Overall Scope of the Data Collection

1. Reporting Period

11. WCB and OEA limit the data collection to calendar year 2022, consistent with their proposal in the *Public Notice.* WCB and OEA find that the data from 2022 will provide the most pertinent and the best indicator of relevant costs. Some commenters propose that WCB and OEA expand the data collection reporting period beyond just 2022. Others argue that the burden of requiring additional years of data would ''outweigh[] any material benefit.'' WCB and OEA decline to expand the reporting period. Data from 2022 represent the most recent data available, and are therefore likely to be more representative of future operations by IPCS providers than data from prior years. To the extent that data from prior years would be useful in determining just and reasonable rates, WCB and OEA already have data regarding audio IPCS, including investments, expenses, revenues, demand, site commission payments, and ancillary services charges and practices, from the Third Mandatory Data Collection. WCB and OEA recognize that those data are limited to audio IPCS, but find that the burdens associated with collecting video data for prior years would outweigh any potential benefit. In particular, the pandemic had a substantial impact on providers' operations and likely accelerated the implementation of (and therefore increased the costs and revenues associated with) video IPCS as a substitute for in-person visitation, such that data from those prior years may not be representative of providers' future operations. As a result, WCB and OEA find that collecting data solely for 2022 will best equip us to set rate caps that reflect providers' operations going forward and avoid the burdens associated with collecting additional data that may not be representative or are already available for prior periods.

12. While WCB and OEA recognize the incremental benefits of having more comprehensive cost data, most of the categories of data that WCB and OEA seek in this data collection were addressed in the previous data collection, such that collecting these data from years prior to 2022 would be largely redundant. To the extent WCB and OEA seek new categories of data, the burden on providers to produce those data would be significant. Given the burdens already imposed by this revised data collection which are necessary to implement the new statute, as well as the comparatively shorter timeframe for submitting responses, WCB and OEA decline to impose an additional burden by expanding the reporting period as some commenters propose.

2. Cost Reporting and Cost Allocation

13. In the *Public Notice,* WCB and OEA proposed to adapt the cost reporting and cost allocation methodologies specified for the Third Mandatory Data Collection for use in the 2023 Mandatory Data Collection. No commenter challenges this overall approach or suggests fundamental changes to the proposals for applying those methodologies to video IPCS. Instead, commenters suggest relatively discrete modifications to the proposed instructions for reporting company-wide

cost data and for allocating reported costs among cost categories. After considering these comments, WCB and OEA adopt the cost allocation methodology essentially as proposed, with modifications to the instructions designed to help providers understand the cost allocation methodology and to obtain further information on how providers implement it. WCB and OEA also modify the instructions to establish, at the facility-specific level, the same reporting structure for capital assets and expenses that is in place at the company-wide level.

14. As a general matter, the changes to the cost reporting and cost allocation instructions reflect an understanding, from WCB and OEA's review of the Third Mandatory Data Collection submissions, that certain providers' internal accounting and recordkeeping systems limit those providers' ability to provide highly disaggregated cost data and to finely tune their cost allocation procedures. Given these limitations, the revised instructions generally require providers to describe in greater detail their implementation of the cost reporting and cost allocation instructions, rather than prescribe additional cost reporting and cost allocation requirements for which certain providers may not have the internal accounting systems needed to comply with such requests.

15. For example, WCB and OEA require providers to describe the types of costs they include in various capital and operating expense categories, rather than list the types of costs that are to be included in each category, as one commenter suggests. WCB and OEA also require providers to describe in greater detail the factors they use to allocate certain types of shared and common costs among audio IPCS, video IPCS, and nonregulated services, rather than specifying factors for providers to use in performing those allocations. WCB and OEA find that these revisions will help the Commission understand the nature of the reported costs, without imposing significant additional burdens on providers that would be unlikely to result in more useful information.

16. WCB and OEA reject, however, ViaPath's proposal that WCB and OEA permit providers to ''use the allocation methodologies that best reflect [their] business and the way in which [they] keep[] [their] books and records as long as the provider[s] document[] and explain[] [such] methodologies in [their] MDC response[s].'' The detailed cost allocation hierarchy set forth in the proposed instructions was carried forward from the instructions for the Third Mandatory Data Collection and, as such, reflects the Commission's directive that the Third Mandatory Data Collection collect, ''to the extent possible, uniform cost . . . data from each provider. In directing that WCB and OEA ''update and restructure'' that prior data collection, the Commission did not propose or suggest that WCB and OEA should undertake wholesale revisions to the core methodologies of the Third Mandatory Data Collection by allowing each provider to devise its own allocation methodology. As the Wright Petitioners point out, allowing providers to devise their own cost allocation methodologies in the previous data collection led to ''large discrepancies between costs allocated towards capital expenses and operating expenses,'' with providers assigning costs inconsistently among the categories provided and reporting nonregulated service costs as inmate calling services costs. Allowing providers to use their own allocation methodologies also would substantially increase the back-end burden on all parties that want to process and analyze the reported data, because of the extent and complexity of the adjustments that would be necessary to correct for inconsistencies among providers' responses. The cost allocation hierarchy set forth in the instructions provides a necessary and workable framework within which to standardize and compare the data submitted, while, as WCB and OEA recognize above, affording providers flexibility to implement the cost allocation instructions in a manner that reflects their accounting and recordkeeping systems.

3. Overall Reporting Categories

17. WCB and OEA adopt their proposal to require providers to allocate their investments and expenses among audio IPCS, video IPCS, safety and security measures, various types of ancillary services, and other services and products. WCB and OEA find, subject to certain refinements related to safety and security measures, that these categories are well-suited to provide the Commission with the information it needs to comply with its ratemaking responsibilities under the Communications Act and the Martha Wright-Reed Act without unduly burdening providers.

18. WCB and OEA decline to require providers to subdivide their audio and video IPCS costs into more discrete categories based on the type of audio or video service being provided, as some parties suggest. While WCB and OEA recognize that video IPCS costs may vary based on the equipment used to provide the service, WCB and OEA find that the best way to address this possibility is to ask providers to report the per-unit costs of the devices used for video IPCS. This information, combined with the requirement that providers report their video IPCS costs on a facility-by-facility basis while describing the video services provided at each facility, should provide sufficient information to measure any cost differentials among different video services without imposing on providers the burden of subdividing video IPCS costs into more discrete categories.

19. WCB and OEA adopt their proposal to allow, but not require, providers to subdivide their investments and expenses for audio IPCS, video IPCS, safety and security measures, and ancillary services between interstate/international and intrastate services. While WCB and OEA recognize that providers likely experience ''no meaningful difference[s]'' between the costs of providing interstate/international and intrastate IPCS (other than the costs of terminating audio communications in foreign destinations), WCB and OEA find this option properly allows providers the flexibility to inform the Commission if they do incur different costs based on the jurisdictional nature of the services they provide.

4. Safety and Security Measures

20. WCB and OEA adopt their proposal to require providers to allocate the annual total expenses they incurred in providing safety and security measures among seven categories using the provider's best estimate of the percentage of those expenses attributable to each category. After considering the comments regarding this proposed allocation process, WCB and OEA modify the instructions for this allocation to make them clearer and more comprehensive.

21. Some providers take issue with WCB and OEA's proposed seven-category framework for reporting safety and security measure costs, claiming that their internal accounting systems do not align with these categories and that providers will have difficulty allocating their costs in the manner proposed. WCB and OEA do not find these arguments persuasive. As Securus concedes, the cost categories WCB and OEA proposed are similar to categories employed in the Third Mandatory Data Collection. Accordingly, WCB and OEA find, as they did with the Third Mandatory Data Collection, that the proposed categories provide a comprehensive and workable framework for dividing safety and security measure costs into reasonably

homogenous groupings that ''should capture all [safety and] security costs,'' particularly with the addition of multiple examples of costs for each category. To the extent that providers make measures available that do not fit within the first six categories, the data collection also includes a catch-all category for ''Other Safety and Security Measures.''

22. The Martha Wright-Reed Act requires the Commission to consider ''costs associated with any safety and security measures necessary to provide'' IPCS in setting IPCS rates. While the commenters present sharply divergent views as to whether providers should be allowed to recover the costs of various types of safety and security measures through their rates, the purpose here is to ensure, to the extent consistent with the providers' internal accounting and recordkeeping, that the data collection generates, in a timely manner, sufficient information for the Commission to implement ''whatever decision it makes regarding the necessity of safety and security measures.'' This necessarily requires tradeoffs between pinpointing the costs of each safety and security measure providers offer and the providers' ability to produce (and the Commission's ability to process) highly disaggregated safety and security measure cost data within the 18 to 24 month statutory timeframe. WCB and OEA find the proposed reporting structure and associated categories, modified as described below, to be the most effective means of balancing these competing considerations.

23. One commenter claims that the proposed categories ''will not provide a full or accurate picture of how safety and security costs are associated with the service offering,'' while other commenters propose that WCB and OEA should ''provid[e] examples and or definitions . . . of certain security services and costs that would fall under the seven categories,'' and that the required safety and security cost data should, in general, be more granular. The proposed instructions already include multiple examples of safety and security measures that fall within each of the seven categories. WCB and OEA find that these lists, as revised in response to the comments, are sufficiently comprehensive to allow providers to sort their safety and security measures into the categories WCB and OEA have established. However, because some commenters may not have understood the examples WCB and OEA provided, they have reorganized the relevant instructions to simplify them and increase their clarity. Specifically, WCB and OEA modify both the company-wide and the facility-by-facility instructions to first require providers to assign each of their safety and security measures to one of the seven listed categories and second to allocate their aggregate costs of providing safety and security measures among these categories.

24. In addition, WCB and OEA give providers the option to supplement what WCB and OEA require them to submit should they determine that more specific categories are needed to reflect their operations. Specifically, when allocating these costs, providers may divide the seven listed categories into subcategories of their own choosing, and thereby report costs in a more detailed manner. WCB and OEA find that allowing for further subdivision will better enable providers to submit a ''full [and] accurate picture'' of their costs in a way that ''meaningfully distinguish[es] among these costs,'' while also retaining the uniform reporting structure that is necessary for us to effectively compare cost data among providers. WCB and OEA also adopt a suggestion that they instruct providers to assign any safety and security measure that does not precisely match any of WCB and OEA provided examples to the category that provides the best fit, and to allocate the costs of such measures accordingly. Directing providers to categorize services in this manner will give them additional flexibility in applying the categories to their own internal accounting structures.

25. To further help providers allocate safety and security costs among the established categories, WCB and OEA modify the instructions to include additional and guidance. These changes address certain commenters' concerns about their ability to allocate their security costs among each category within the seven-category reporting framework without further guidance. However, given providers' concerns with their ability to implement the seven-category framework, WCB and OEA decline to require that the expenses allocated to each of the seven categories be further allocated among the various safety and security measures within each category. Conversely, WCB and OEA also decline to adopt Pay Tel's proposal that the collection be limited to ''data regarding Safety and Security Measures associated with distinct and separate 'system[s], product[s], or service[s]' which are provided as ancillary components to the IPCS offering.'' As an initial matter, those measures are effectively encompassed within the categories. To the extent that Pay Tel is proposing that WCB and OEA only collect such data, that approach would require that WCB and OEA prejudge which safety and security measures are ''necessary,'' which would be beyond the scope of WCB and OEA's delegated authority.

26. WCB and OEA also decline to subdivide the safety and security measures reporting category into different real-time and non-real-time subcategories, as one commenter urges. WCB and OEA find that the granularity already included in the safety and security reporting requirements is sufficient to provide the Commission with the data it will need to set just and reasonable rates caps for IPCS. The additional burden more subdivision would impose on providers outweighs any potential benefit of further disaggregation.

27. One commenter observes that ''there are no safety and security costs associated with ancillary services of the type contemplated'' for IPCS. WCB and OEA agree that this is likely the case for most providers, but those providers can simply enter ''0'' in the appropriate Excel template cells. Accordingly, WCB and OEA will include the proposed inquiries asking providers to report any safety and security costs they incur in connection with their ancillary services. WCB and OEA find that this approach will accommodate potential variation among providers' practices without burdening any provider.

28. Lastly, WCB and OEA supplement questions in the Word template in order to obtain additional information on providers' safety and security measures. Commenters discuss certain nuances that may apply to the implementation of safety and security measures and consequent cost allocation issues that are not fully addressed by the questions proposed (*e.g.,* differences based on infrastructure and devices used to provide IPCS, and circumstances in which safety and security services apply to both IPCS and nonregulated services). WCB and OEA agree with these commenters on the need to seek additional information from providers regarding their safety and security measures and attendant practices. Commenters also dispute the extent to which ''providers' accounting systems'' are—or are not—''designed to track 'safety and security' costs.'' Given this ambiguity as to providers' accounting practices for safety and security measures, particularly in light of providers' concerns about their ability to apply their accounting systems to the categories WCB and OEA proposed, WCB and OEA find that additional information concerning providers' accounting practices and how they

allocate their internal data among the seven categories will assist the Commission in accurately determining the costs of providers' safety and security measures and distinguishing between ''essential and non-essential costs.'' Accordingly, WCB and OEA modify the instructions and Word template to obtain information on these subjects, in order to provide the Commission with a more comprehensive and accurate understanding of providers' implementation of, and accounting and recordkeeping practices regarding, safety and security measures.

5. Video IPCS

29. WCB and OEA adopt the majority of their proposals related to video IPCS, but make targeted changes to capture more complete information. As the record now makes clear, the costs of providing video IPCS likely vary depending on the specific infrastructure, devices, methods, technologies, and features used to provide those services. WCB and OEA find that this data collection should attempt to capture those variations at a more granular level than WCB and OEA proposed, to the extent possible without unduly burdening providers. Informed by the record compiled in response to the *Public Notice,* WCB and OEA agree that additional information concerning video IPCS would assist the Commission in its ratemaking efforts and therefore add general inquiries regarding the technical requirements of the providers' video IPCS offerings, the infrastructure used to provide those services, and the reasons for and costs of any data storage associated with those services, among other matters.

30. *Service Parameters.* To help the Commission understand the providers' video IPCS offerings, WCB and OEA require providers to describe in detail each video service they provided during 2022. Providers must also identify, among other matters, each transmission technology used to provide each type of video service they provided to incarcerated people, provide any information they have regarding service parameters and performance indicators, and describe any steps they take to monitor whether the service functions properly. WCB and OEA also require providers to state whether they, as opposed to the correctional facilities, provide any broadband connection needed for the providers' IPCS offerings; the extent to which they use those connections to provide audio as well as video IPCS; and the extent to which facilities use those connections for their own communications.

31. *Infrastructure.* WCB and OEA require providers to describe the infrastructure they used to provide video IPCS, including any infrastructure that is located within correctional facilities. WCB and OEA find that information on the type of infrastructure facilities deployed and its technical capabilities, to the extent the providers have that information, will help the Commission evaluate providers' video IPCS offerings. Accordingly, WCB and OEA have added a question to the Word template that directs providers to explain whether they, as opposed to the facilities they serve, provide and maintain any infrastructure that is located within facilities. WCB and OEA also direct providers to submit any information they have on the nature and capabilities (*e.g.,* speed and latency) of the video IPCS infrastructure located within the facilities they serve, including use and general capability of Wi-Fi routers, if known.

32. *Data Storage.* WCB and OEA add additional inquiries to the Word template designed to capture data on the storage costs associated with video IPCS in comparison to audio IPCS, as well as other information regarding data storage policies and practices. Based on information in publicly available contracts, the Wright Petitioners suggest expanding the data storage-related questions to request information on data retention policies and the data processing and analysis costs associated with video IPCS. WCB and OEA agree that additional questions regarding the quantity of data stored and the storage period will help the Commission understand the costs associated with video IPCS. Likewise, if, as the Wright Petitioners suggest, data storage costs vary depending on the storage method and underlying technology used, information on those factors may also be useful to help the Commission discharge its ratemaking responsibilities. WCB and OEA therefore include an additional narrative request asking providers to explain these matters. WCB and OEA find that allowing providers to submit a narrative response to this request imposes less of a burden on providers than would a more granular approach, such as requiring providers to report this information on a facility-by-facility basis.

33. *Other Video IPCS Information.* WCB and OEA also add questions about how providers market and sell video IPCS to consumers. These questions include inquiries regarding whether video IPCS is offered as a stand-alone service or is ''bundled'' with other services. WCB and OEA also include questions asking whether video IPCS rates are based on minutes of use, number of communications, or data usage, and whether there are any limitations or conditions on how incarcerated people may use video IPCS. WCB and OEA find that these questions provide the best approach for ensuring that the data collection captures information on providers' rate structures and practices affecting video IPCS.

34. WCB and OEA decline to adopt one commenter's proposal that WCB and OEA require providers to ''track and report usage data for apps that are not free to the end-user.'' Although such usage data might be helpful in providing context for the provision of IPCS on tablets and any associated costs, that is not the focus of this collection. Rather, WCB and OEA directly address the fundamental elements of providing IPCS on tablets by requiring providers to submit data on video sessions, audio minutes, and inputs for providing audio and video IPCS (*e.g.,* hardware, software, and network connectivity), as well as costs exclusively attributable to IPCS versus other services. WCB and OEA find that these questions are sufficient to address, and more directly target, any issues that may be particular to the provision of IPCS on tablets.

6. Site Commissions

35. As a general matter, WCB and OEA adopt the questions concerning company-wide and facility-level site commissions proposed in the *Public Notice,* which were largely based on the Third Mandatory Data Collection, as well as the proposed updates to the related instructions and templates. Those updates include additional questions seeking information on interstate, intrastate, and international site commissions, as well as information concerning site commissions for both audio and video services. No commenter opposed the adoption of this general framework. The Wright Petitioners additionally propose that the instructions include a diagram or chart explaining the structure of the site commission data requests. WCB and OEA agree that visual aids may improve the accuracy and consistency of the data reporting by helping providers better understand how to allocate their data among the different categories of site commissions. Accordingly, WCB and OEA have added diagrams to the instructions.

36. WCB and OEA decline, however, to adopt the related request that they add instructions requiring providers to report specific details regarding each type of site commission. The updated

instructions and templates already require providers to submit this level of detail at the facility-level. For instance, with regard to what qualifies as a legally mandated site commission, the instructions require that providers include a citation to the authority requiring such payment in the attached Excel template. Moreover, for in-kind site commissions, the Word template requires providers to describe ''each payment, gift, exchange of services or goods, fee, technology allowance, or product provided to the Facility that [the provider] classif[ies] as an In-Kind Site Commission payment'' for both legally mandated and contractually prescribed site commissions. Thus, the instructions and templates are already designed to provide the level of transparency sought.

C. Specific Instructions

1. Definitions

37. Commenters generally support or do not comment on the proposed definitions. WCB and OEA therefore adopt the proposed definitions with certain modifications, as explained below.

38. *Audio IPCS and Video IPCS.* The proposed instructions included a definition of ''IPCS,'' but did not separately define ''Audio IPCS'' or ''Video IPCS.'' WCB and OEA adopt a request that they define each of these terms because cost allocation is required ''between audio IPCS and video IPCS,'' and defining the relevant terms will help avoid potential confusion in making this allocation. WCB and OEA therefore add the following definitions to the instructions:

> *Audio IPCS* means, for the purpose of this data collection, all services classified as inmate calling services within the meaning of 47 CFR 64.6000(j), including (a) Interconnected VoIP; (b) Non-interconnected VoIP; (c) all Telecommunications Relay Services (TRS), including the use of a device or transmission service to access TRS; and (d) all point-to-point video services made available to incarcerated people for communication in American Sign Language (ASL) with other ASL users.
>
> *Video IPCS* means any video communications service used by incarcerated people for the purpose of communicating with individuals outside the correctional institution where the people are incarcerated, regardless of the technology used. It typically includes an integrated audio component, and excludes all services classified as Audio IPCS, as well as Other Products and Services, such as one-way entertainment, educational, religious, vocational, and instructional programming.

39. WCB and OEA decline to restrict the definitions of Audio IPCS ''to voice-only calling services using either circuit switched or VoIP technology'' and Video IPCS ''to real-time remote or on-site video visitation services,'' as one commenter suggests. The Martha Wright-Reed Act unequivocally expands the definition of IPCS to include advanced communications services. Advanced communications services broadly include ''any audio or video communications service used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held, regardless of technology used.'' WCB and OEA therefore do not limit the definitions of Audio IPCS or Video IPCS to specific types of technology used to transmit the services.

40. *Safety and Security Measures.* WCB and OEA proposed a broad definition of ''safety and security measures,'' in accordance with the Martha Wright-Reed Act's directive that the Commission ''shall consider,'' as part of its ratemaking, ''costs associated with any safety and security measures necessary to provide'' telephone service and advanced communications services in correctional institutions. This approach was designed to allow the Commission the broadest possible view of the costs that providers and facilities incur. WCB and OEA agree, however, with Pay Tel's observation that the proposed definition is ''so broad as to encompass the entirety of IPCS.'' To eliminate this issue, WCB and OEA revise the definition of ''safety and security measures'' to read:

> [A]ny safety or security surveillance system, product, or service, including any such system, product, or service that: helps the Facility ensure that Incarcerated People do not communicate with persons they are not allowed to communicate with; helps monitor and record on-going communications; or inspects and analyzes recorded communications. Safety and Security Measures also include other related systems, products, and services, such as a voice biometrics system, a PIN system, or a system concerning the administration of subpoenas concerning communications. The classification of a system, product, or service as a Safety and Security Measure does not mean that it is part of a Provider's IPCS-Related Operations.

41. *Provider, Contractor, and Subcontractor.* In the proposed definitions, WCB and OEA sought to clarify the relationship between two types of IPCS providers—contractors and subcontractors—to provide notice of filing obligations to entities that may not have previously been subject to the Commission's authority. WCB and OEA conclude, however, that further revisions are necessary. Pay Tel suggests that the Commission ''should take steps to ensure that it is apprised of situations where multiple entities are involved in providing a covered service to avoid instances of incomplete or duplicated data.'' While it does not explain what the Commission should do in the event multiple entities are involved in the provision of IPCS, WCB and OEA agree that clarification of the definitions of ''Provider'' and ''Subcontractor'' will ensure WCB and OEA receive the data necessary to achieve ''insight into overall service costs.'' WCB and OEA therefore amend the proposed definitions of ''Provider'' and ''Subcontractor'' to make clear that any contractor or subcontractor that is providing IPCS, regardless of whether that entity has a contract directly with the facility or with another provider, is considered to be a provider for the purposes of the data collection.

42. *Facility.* In the proposed instructions, WCB and OEA proposed including definitions for several synonyms for the term ''Facility,'' given the apparently interchangeable use of different terms in both the Martha Wright-Reed Act and the Commission's rules. One provider suggests eliminating the four separate terms used ''to reference a prison or jail,'' and points out that ''the Instructions themselves repeatedly use the term Facility.'' WCB and OEA agree that the inclusion of these terms is redundant and could cause confusion. WCB and OEA therefore delete the defined terms ''Correctional Facility,'' ''Correctional Institution,'' and ''Detention Facility'' and edit the definition of ''Facility'' to include these terms synonymously. WCB and OEA likewise make conforming edits to refer only to ''Facility'' throughout the final instructions, templates, and certification form.

43. *Miscellaneous Definitional Edits.* WCB and OEA have also made various administrative revisions to the definitions. These include grammatical corrections, consistent use of terms, and other non-substantive edits.

2. Facility-Specific Data

44. WCB and OEA adopt, in modified form, the suggestion that WCB and OEA require providers to indicate via a checkbox ''whether [facility-specific] data submitted is at the facility level or has been allocated from a contract, in order to ensure that contract-level data is correctly allocated to the facility level.'' WCB and OEA find that obtaining this information may help eliminate confusion when attempting to understand how providers arrived at the amounts reported in their cost categories. However, WCB and OEA

determine that this area is too nuanced for a checkbox and therefore revise the Word template to direct providers to identify whether the facility-specific data they report were recorded at the company, contract, or facility level. This requirement will clarify whether data were recorded at the facility-level or whether they have been allocated and must be justified. Because this step would be helpful and impose only minimal burdens on reporting providers, WCB and OEA add this question to the Word template.

3. Telecommunications Relay Services Costs

45. WCB and OEA amend the Word template to allow providers the option of providing information regarding any cost increases resulting from the TRS requirements adopted in the *2022 ICS Order.* In that order, the Commission adopted several requirements to improve access to communications services for incarcerated people with communication disabilities. IPCS providers must provide incarcerated people with communications disabilities with access to all relay services eligible for TRS Fund support in any correctional facility where broadband is available and where the average daily population incarcerated in that jurisdiction totals 50 or more persons. It also required that where inmate calling service providers are required to provide access to all forms of TRS, they also must allow ASL direct, or point-to-point, video communication. The Commission clarified and expanded the scope of the restrictions on inmate calling service providers assessing charges for TRS calls, expanded the scope of the required Annual Reports to reflect the above changes, and modified TRS user registration requirements to facilitate the use of TRS by eligible incarcerated persons. Providers have had to comply with certain of these requirements (*i.e.,* the limitations on charging) since they became effective earlier this year, while compliance with other requirements is mandated beginning January 1, 2024, or, in some cases, pending approval by the Office of Management and Budget pursuant to the Paperwork Reduction Act.

46. Because this data collection seeks data only for calendar year 2022, providers' submissions will not fully reflect any additional costs they incur in complying with the new TRS requirements. In recognition of this fact, Securus and Pay Tel urge that providers be given the option of submitting data estimating the costs of implementing the new requirements, even if those costs were not incurred in calendar year 2022. WCB and OEA find this suggestion reasonable and therefore modify the Word template to allow, but not require, providers to report their estimates of their annual incremental costs of complying with the TRS requirements adopted in the *2022 ICS Order,* to the extent those costs are not reflected in their data for 2022. Annual incremental costs of TRS compliance are those the provider would not have incurred but for its compliance with these TRS requirements. Shared and common costs will already be reflected in the data providers will be reporting for 2022 and thus should be excluded from the annual incremental costs of TRS compliance.

4. Facility Costs of Providing Safety and Security Measures

47. WCB and OEA adopt their proposal to require providers to report any verifiable and reliable information in their possession about the costs the facilities they serve incur to provide safety and security measures in connection with the provision of IPCS, as well as any verifiable and reliable information on other facility-incurred costs that are not directly related to safety and security. Any such information will provide the Commission with a more comprehensive picture of the total costs of providing IPCS. Pay Tel has encouraged us to include facilities' costs in any effort to calculate the costs of IPCS. It argues that facilities incur recoverable costs ''in making IPCS available'' and supports WCB and OEA's ''efforts to document and acknowledge these costs.''

48. The record also suggests, however, that providers are ''highly unlikely'' to have such information on facilities' costs. One commenter proposes that the Commission develop a reporting template for use by facilities and seek this information directly from facilities. Although WCB and OEA acknowledge that facilities may be more likely to have access to this information than providers, collecting data directly from facilities would raise a number of difficulties. Any attempt to seek data directly from facilities would arguably exceed the authority delegated to WCB and OEA by the Commission regarding this data collection. Attempting to expand the data collection to include facilities would also pose significant practical challenges. Doing so would greatly expand the group of entities subject to the data collection and would multiply the burdens imposed by the collection. Furthermore, developing a template, seeking comments, and collecting responses from facilities would significantly delay the data collection and could prevent the Commission from meeting the statutory timeframe established by the Martha Wright-Reed Act. Accordingly, WCB and OEA decline to adopt this proposal. WCB and OEA emphasize, however, that the Commission has repeatedly encouraged correctional officials to submit data on their IPCS-related costs, including any costs they incur for safety and security measures.

49. Finally, WCB and OEA adopt their proposal to require providers to be able to produce, on request, documentation sufficient to explain and justify the accuracy and reliability of any data they report regarding the costs incurred by facilities. This requirement will enable the Commission to evaluate the reliability and accuracy of any such data. It will minimize burdens by not requiring the submission of such documentation with providers' responses but only requiring the retention and subsequent production of the relevant documents upon request—documents which providers would likely retain in the normal course of business. No commenters challenged this aspect of the proposal. WCB and OEA find that this requirement will help ensure that the Commission will be able to evaluate the accuracy and reliability of the data submitted while adding only a minimal additional burden on providers.

5. Admissions, Releases, and Turnover Rates

50. WCB and OEA modify the Excel template to make the questions regarding facility-specific total admissions, total releases, and weekly turnover rates optional. In the *Third Mandatory Data Collection Order, Third Mandatory Data Collection for Calling Services for Incarcerated People,* Final Rule, 87 FR 16560, March 23, 2022, WCB and OEA identified these metrics as important to helping the Commission correct for the possibility that other population metrics, such as average daily population, might not fully account for all the costs of providing audio IPCS at smaller jails. WCB and OEA therefore required the submission of facility-specific data on admissions, releases, and weekly turnover rates as part of the Third Mandatory Data Collection and, in the *Public Notice,* proposed to incorporate that requirement into the 2023 Mandatory Data Collection. However, WCB and OEA's review of providers' responses to the Third Mandatory Data Collection, as well as comments on the proposed instructions, make clear that requiring these data would impose a significant

burden on providers without producing meaningful results, due in large part to difficulties providers encounter in obtaining accurate data from correctional officials.

51. As one commenter explains, ''IPCS providers do not track or have adequate information to respond to questions about 'weekly turnover,' 'total admissions,' or 'total releases' at each correctional facility they serve.'' Another provider explains that it has ''no way of gauging the accuracy of this data or whether the sample size was useful.'' In attempting to balance competing considerations regarding the potential importance of these data and the relative inaccessibility, WCB and OEA make the reporting of this information optional. This approach will reduce the burdens on providers, while still allowing them to report this information where possible.

6. Bundling

52. WCB and OEA modify the Word template to obtain specific information on the extent to which providers bundle IPCS with nonregulated services and on the steps providers employ to ensure that the costs of their nonregulated services are not allocated to IPCS or associated ancillary services. Although WCB and OEA did not explicitly include questions about bundling in their proposals, in the *Public Notice,* WCB and OEA sought comment on whether there were ''additional data'' that providers should be required to submit in response to the Mandatory Data Collection. The Wright Petitioners explain that bundling data are needed because providers offer different services that ''may or may not be bundled together when reporting the data,'' potentially inflating the costs reported for regulated services.

53. WCB and OEA agree that data on service bundles will assist the Commission in understanding what services are provided and how they are provided, and, most importantly, in establishing just and reasonable IPCS rates. WCB and OEA therefore add questions to the Word template that direct each provider to report, among other information, whether it offers regulated and nonregulated services as a bundle and, if so, to identify each of the components included in the bundle; to identify which components are regulated or nonregulated and the standalone price of each component; to state whether bundling affects the provider's overall costs and, if so, how; and to indicate whether the provider's bundling practices vary by facility or by contract.

7. Financial Reports

54. WCB and OEA adopt their proposal to require all providers to submit audited financial statements or reports for 2022, or, in the absence of an audited financial statement or report, similar financial documentation for 2022, to the extent produced in the ordinary course of business.

D. Timeframe for Provider Responses to the Data Collection

55. In the *Public Notice,* WCB and OEA sought comment on their proposal to require providers to file their responses to the data collection within 90 days of the release of this Order. The proposed timeframe, which admittedly is somewhat shorter than the timeframe for the previous mandatory data collection, reflects the time constraints the Martha Wright-Reed Act imposes for ''promulgat[ing] any regulations necessary to implement'' the Act.

56. Providers instead propose requiring responses to the data collection 120 days following release of this Order. ViaPath asserts that ''[p]roviders need a reasonable amount of time to complete the report'' and Securus comments that ''90 days is an insufficient period of time'' to respond to the data collection. ViaPath contends that ''a slight extension of the MDC filing deadline is reasonable.'' WCB and OEA agree with ViaPath and establish October 31, 2023 as the date on which provider responses will be due, unless final PRA authority for this collection is not granted prior to then. Given the date of release of this Order, this represents an extension of an additional week from the originally proposed 90-day deadline, which, while not as extensive as sought, will nonetheless allow providers additional time to prepare their submissions. WCB and OEA find that granting this extension will still provide the Commission with sufficient time to promulgate regulations to implement the Martha Wright-Reed Act consistent with the Act's time constraints.

E. Digital Equity and Inclusion

57. As part of the Commission's continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, WCB and OEA invited comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues associated with the data collection. Specifically, WCB and OEA sought comment on how their proposals for that collection may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

58. WCB and OEA conclude that the Mandatory Data Collection adopted here will promote digital equity, particularly for incarcerated people and their families. In recent years, the Commission has collected data from providers of calling services for incarcerated people as part of its ongoing efforts to establish just and reasonable rates for those services that reduce the inequitable financial burdens unreasonable rates impose on incarcerated people and their loved ones, while ensuring that providers are fairly compensated for their services. The information IPCS providers submit in their data collection responses will help the Commission advance these goals in accordance with the Communications Act and the Martha Wright-Reed Act.

III. Procedural Matters

59. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, WCB and OEA have prepared a Supplemental Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Order* on small entities. The Supplemental FRFA supplements the Final Regulatory Flexibility Analyses completed by the Commission in the *Rates for Interstate Inmate Calling Services* proceeding and is set forth in Appendix B.

60. *Final Paperwork Reduction Act Analysis.* The Order contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, WCB and OEA note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198; *see* 44 U.S.C. 3506(c)(4), WCB and OEA previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. WCB and OEA have

assessed the effects of the data collection on small business concerns, including those having fewer than 25 employees, and find that to the extent such entities are subject to the collection, any further reduction in the burden of the collection would be inconsistent with the objectives behind the collection.

61. Congressional Review Act. The Commission will not send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), see 5 U.S.C. 801(a)(1)(A), because it does not adopt any rule as defined in the CRA, 5 U.S.C. 804(3).

IV. Ordering Clauses

62. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i)–(j), 155(c), 201(b), 218, 220, 255, 276, 403, and 716, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 155(c), 201(b), 218, 220, 255, 276, 403, and 617, and the authority delegated in sections 0.21, 0.91, 0.201(d), 0.271, and 0.291 of the Commission's rules, 47 CFR 0.21, 0.91, 0.201(d), 0.271, 0.291 and paragraphs 84 and 85 of the *2023 IPCS Order,* this Order *is adopted.*

63. *It is further ordered* that the Commission's Office of the Secretary, Reference Information Center, *shall send* a copy of this Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Supplemental Final Regulatory Flexibility Analysis

64. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the 2023 Mandatory Data Collection *Public Notice,* released in April 2023. The Wireline Competition Bureau (WCB) and the Office of Economics and Analytics (OEA) sought written public comment on proposals in the *Public Notice,* including comment on the Supplemental IRFA. No comments were filed addressing the Supplemental IRFA. The *Public Notice* sought comment on proposals to implement the 2023 Mandatory Data Collection in the Commission's Incarcerated People's Communications Services (IPCS) proceeding and supplements the Final Regulatory Flexibility Analyses completed by the Commission in the *Rates for Interstate Inmate Calling Services* and other Commission orders pursuant to which this data collection will be conducted. This present Supplemental FRFA conforms to the RFA.

F. Need for, and Objectives of, the Order

1. In the Order, WCB and OEA adopt policies and specific requirements to implement the forthcoming 2023 Mandatory Data Collection for IPCS. In the *2023 IPCS Order,* the Commission adopted a new data collection requirement. The Commission determined that this data collection would enable it to ''meet both [its] procedural obligations (to consider certain types of data) and [its] substantive responsibilities (to set just and reasonable rates and charges)'' under the Martha Wright-Reed Act and the Communications Act of 1934, as amended (the Communications Act). Likewise, it directed WCB and OEA ''to update and restructure the most recent data collection as appropriate to implement the Martha Wright-Reed Act.''

2. The Order determines the overall scope of the data collection including: limiting the data collection reporting period to calendar year 2022; defining cost reporting and cost allocation methodologies; defining reporting categories; requiring providers to allocate safety and security measures among seven categories; requiring that providers submit additional information for video IPCS; and adding questions concerning company-wide and facility-level site commissions. The Order also clarifies specific instructions for data collection to provide clarity for the providers completing the forms. Finally, the Order establishes that providers must submit responses by October 31, 2023. Pursuant to their delegated authority, WCB and OEA have prepared instructions, reporting templates, and a certification form for the 2023 Mandatory Data Collection and are issuing this Order to adopt all aspects of these documents.

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

3. There were no comments filed that specifically addressed the proposed rules and policies presented in the Supplemental IRFA.

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

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

I. Description and Estimate of the Number of Small Entities to Which the 2023 Mandatory Data Collection Will Apply

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the 2023 Mandatory Data Collection. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

6. As noted above, an IRFA was incorporated in the *2023 IPCS Notice.* In that analysis, the Commission described in detail the small entities that might be affected. Accordingly, in this Order, for the Supplemental FRFA, we incorporate by reference from these previous Regulatory Flexibility Analyses the descriptions and estimates of the number of small entities that may be impacted by the *Order.*

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

7. The 2023 Mandatory Data Collection will impose new or modified reporting, recordkeeping and other compliance obligations on small entities. The Order requires IPCS providers to submit data and other information on, among other matters, calls, demand, operations, company and contract information, information about facilities served, revenues, site commission payments, the costs of safety and security measures, video IPCS, and ancillary fees. WCB and OEA estimate that approximately 30 IPCS providers will be subject to this one-time reporting requirement. In the aggregate, WCB and OEA estimate that responses will take approximately 7,950 hours and cost approximately $493,224.

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

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

9. The 2023 Mandatory Data Collection is a one-time collection and does not impose a recurring obligation on providers. Because the Commission's *2023 IPCS Order* requires all IPCS providers to comply with the 2023 Mandatory Data Collection, the collection will affect smaller as well as larger IPCS providers. WCB and OEA have taken steps to ensure that the data collection template is competitively neutral and not unduly burdensome for any set of providers and have considered the economic impact on small entities in finalizing the instructions and the template for the 2023 Mandatory Data Collection. For example, the 2023 Mandatory Data Collection requires the collection of data for a single calendar year instead of three calendar years, as in previous data collection. In response to the comments, WCB and OEA have refined certain aspects of the data collection, including modifying the treatment of audio IPCS and safety and security measures, clarifying the reporting of costs related to site commissions, and revising certain proposed definitions. WCB and OEA have also revised instructions for cost reporting and cost allocation that will help the Commission understand the nature of the reported costs, without imposing significant additional burdens on providers. WCB and OEA reorganized instructions for our proposed seven-category framework for reporting safety and security measure costs to simply them and increase clarity. Further, the instructions for the data collection include relevant diagrams to facilitate providers' responses and improve the accuracy and consistency of the data they report. The instructions allow, but do not require, providers to subdivide their audio and video IPCS costs into more discrete categories based on the type of audio or video service being provided, as some parties suggest, to give providers greater flexibility in reporting these costs.

10. WCB and OEA considered but rejected alternative proposals to allow providers to use their own allocation methodologies because of the undue burden it would have on the interested parties and the Commission to analyze and correct inconsistent responses. The modifications adopted in the Order avoid unduly burdening small and other responding providers while ensuring that providers have sufficiently detailed and specific instructions to respond to the data collection. The data collection also makes certain questions optional to reduce reporting burdens, including the questions regarding correctional facility-specific total admissions, total releases, and weekly turnover rates.

L. Report to Congress

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

Federal Communications Commission.

Jodie May,

Chief, Competition Policy Division, Wireline Competition Bureau.

Note: The following appendix, 2023 Mandatory Data Collection Instructions and Template, will not appear in the Code of Federal Regulations.

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BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 23–78; RM–11946; DA 23–618; FR ID 157371]

Television Broadcasting Services Elko, Nevada

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission's Media Bureau, Video Division (Bureau) issued a *Notice of Proposed Rulemaking* (*NPRM*) in response to a petition for rulemaking filed by Reno Licensee, LLC (Petitioner), the licensee of KENV–TV (Station or KENV–TV), channel 10, Elko, Nevada, requesting the substitution of channel 20 for channel 10 at Elko in the Table of TV Allotments. For the reasons set forth in the *Report and Order* referenced below, the Bureau amends FCC regulations to substitute channel 20 for channel 10 at Elko.

DATES: Effective August 3, 2023.

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

SUPPLEMENTARY INFORMATION: The proposed rule was published at 88 FR 16250 on March 16, 2023. The Petitioner filed comments in support of the petition reaffirming its commitment to apply for channel 20. No other comments were filed.

The Bureau believes the public interest would be served by substituting channel 20 for channel 10 at Elko, Nevada. The Commission has recognized that VHF poses challenges for stations providing digital television service on those channels due to propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances and result in large variability in the performance of indoor antennas available to viewers, with most antennas performing very poorly on high VHF channels. According to the Petitioner, the Station ''has received numerous complaints from local viewers who can receive signals from other local stations but are unable to receive the Station's over-the-air signal on Channel 10.'' Thus, the Petitioner asserts that its channel substitution proposal will serve the public by resolving the over-the-air reception problems and enhancing viewer reception in the Station's service area. An analysis conducted using the Commission's *TVStudy* software tool indicates that no persons within the Station's current noise limited contour will lose service and an additional 1,367 persons are predicted to gain service from the Station.

This is a synopsis of the Commission's *Report and Order,* MB Docket No. 23–78; RM–11946; DA 23–618, adopted July 19, 2023, and released July 19, 2023. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden

''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Final Rule

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

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(j), amend the Table of TV Allotments, under Nevada, by revising the entry for Elko to read as follows:

§ 73.622 digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
NEVADA	
Elko	20
* * * * *	

[FR Doc. 2023–16051 Filed 8–2–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 230508–0124; RTID 0648–XD128]

Fisheries Off West Coast States; Modification of the West Coast Salmon Fisheries; Inseason Actions #11–#16

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

ACTION: Inseason modification of 2023 management measures.

SUMMARY: NMFS announces six inseason actions for the 2023–2024 ocean salmon fishing season. These inseason actions modify the commercial and recreational salmon fisheries in the area from the U.S./Canada border to the U.S./Mexico border.

DATES: The effective date for these inseason actions are set out in this document under the heading ''Inseason Actions'' and the actions remain in effect until superseded or modified.

FOR FURTHER INFORMATION CONTACT: Shannon Penna, 562–980–4239, *Shannon.Penna@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The annual management measures for the 2023 and early 2024 ocean salmon fisheries (88 FR 30235, May 11, 2023) govern the commercial and recreational fisheries in the area from the U.S./Canada border to the U.S./Mexico border, effective from 0001 hours Pacific Daylight Time (PDT), May 16, 2023, until the effective date of the 2024 management measures, as published in the **Federal Register**. NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Inseason actions in the salmon fishery may be taken directly by NMFS (50 CFR 660.409(a)—Fixed inseason management provisions) or upon consultation with the Chairman of the Pacific Fishery Management Council (Council), and the appropriate State Directors (50 CFR 660.409(b)—Flexible inseason management provisions).

Management of the salmon fisheries is divided into two geographic areas: north of Cape Falcon (NOF) (U.S./Canada border to Cape Falcon, OR), and south of Cape Falcon (SOF) (Cape Falcon, OR, to the U.S./Mexico border). The actions described in this document affect the NOF and SOF commercial salmon troll fisheries, as set out under the heading ''Inseason Actions'' below.

Consultation with the Council Chairperson on these inseason actions occurred on June 21, 2023, June 24, 2023, June 30, 2023, July 6, 2023, and July 11, 2023. These consultations included representatives from NMFS, Washington Department of Fish and Wildlife, Oregon Department of Fish and Wildlife, and California Department of Fish and Wildlife. Representatives from the Salmon Advisory Subpanel and Salmon Technical Team were also present. A Council representative was present on June 21, 2023, June 24, 2023, and July 6, 2023.

These inseason actions were announced on NMFS' telephone hotline and U.S. Coast Guard radio broadcast on the date of the consultations (50 CFR 660.411(a)(2)).

Inseason Actions

Inseason Action #11

Description of the action: Inseason action #11 modifies the NOF ocean salmon troll commercial fishery. The area between the U.S./Canada border and Cape Falcon is closed.

Effective dates: Inseason action #11 took effect on June 21, 2023, at 11:59 p.m. and remains in effect until June 30, 2023, at 11:59 p.m.

Reason and authorization for the action: Inseason action #11 was necessary to avoid exceeding the area of NOF quota for Chinook salmon. The NMFS West Coast Regional Administrator (RA) considered the 2023 abundance forecasts for Chinook salmon stocks, the timing of the action relative to the length of the season, and determined that this inseason action is necessary to meet management and conservations goals for the 2023–2024 management measures. This inseason action modified quotas and/or fishing seasons under 50 CFR 660.409(b)(1)(i).

Inseason Action #12

Description of the action: Inseason action #12 modifies the NOF ocean salmon troll commercial fishery in the area between the U.S./Canada border and Cape Falcon. The landing and possession limit is 11 Chinook salmon per vessel for the period June 24, 2023, through June 29, 2023.

Effective dates: Inseason action #12 took effect on June 24, 2023, at 12:01 a.m., and remains in effect until June 29, 2023, at 11:59 p.m.

Reason and authorization for the action: The total Chinook salmon

landings in the area from the U.S./Canada border to Cape Falcon are estimated to be 25,148 Chinook salmon out of the May–June 2023 quota of 26,000 Chinook salmon leaving a remainder of 248 Chinook salmon quota. Inseason action was necessary to allow opportunity to catch the remainder of the Chinook salmon quota, while limiting catch to ensure that the quota is not exceeded.

The RA considered the 2023 abundance forecasts for Chinook salmon stocks, the timing of the action relative to the length of the season, and determined that this inseason action is necessary to meet management and conservations goals for the 2023–2024 management measures. This inseason action modified quotas and/or fishing seasons under 50 CFR 660.409(b)(1)(i).

Inseason Action #13

Description of the action: Inseason action #13 modifies the NOF ocean salmon troll commercial fishery in the area between the U.S./Canada border and Cape Falcon. The landing and possession limit was increased from 11 Chinook salmon per vessel per landing week to 50 Chinook salmon per vessel per landing week (Thursday–Wednesday).

Effective dates: Inseason action #13 took effect on July 1, 2023 at 12:01 a.m., and remains in effect until superseded.

Reason and authorization for the action: Inseason action #13 was necessary to preserve the season length and allow access to the Chinook and coho salmon quota.

The RA considered the 2023 abundance forecasts for Chinook salmon stocks, the timing of the action relative to the length of the season, and determined that this inseason action is necessary to meet management and conservations goals for the 2023–2024 management measures. This inseason action modified quotas and/or fishing seasons under 50 CFR 660.409(b)(1)(i).

Inseason Action #14

Description of the action: Retention of halibut caught incidental to the commercial salmon troll fishery (U.S./Canada border to the U.S./Mexico border) is extended past June 30, 2023, and remains in effect until superseded.

Effective dates: Inseason action #14 took effect on July 1, 2023, at 12:01 a.m. and remains in effect until superseded.

Reason and authorization for the action: The 2023 salmon management measures (88 FR 30235, May 11, 2023) authorize the retention of Pacific halibut caught incidental to the commercial salmon troll fishery in 2023 during April, May, and June, and after June 30, 2023, if quota remains and is announced on the NMFS telephone hotline for salmon fisheries. The remaining available incidental Pacific halibut quota for the commercial salmon troll fishery is 12,674 pounds (5748.8 kg; head off), as of June 29, 2023, leaving 75.5 percent of the quota unharvested.

The RA considered the landed catch of Pacific halibut to date and the amount of quota remaining, and determined that this inseason action was necessary to meet management and conservations goals for the 2023–2024 management measures for catch sharing of halibut. Inseason modification of the species that may be caught and landed during specific seasons is authorized by 50 CFR 660.409(b)(1)(ii).

Inseason Action #15

Description of the action: Inseason action #15 modifies the recreational fishery between the U.S./Canada border and the Queets River (Neah Bay and La Push subareas), daily limit of two salmon per day.

Effective date: Inseason action #15 took effect on July 8, 2023, at 12:01 a.m., and remains in effect until September 30, 2023, at 11:59 p.m.

Reason and authorization for the action: In the area from the U.S./Canada border to the Queets River (Neah Bay and La Push subareas), the catch limit was adjusted from two salmon per day, of which only one may be a Chinook salmon, to two salmon per day with no separate limit on the number of Chinook salmon per day. Inseason action #15 was necessary to allow for an increase in Chinook salmon retention and provide greater fishing opportunity for the public to access the available Chinook salmon quota.

The RA considered the 2023 abundance forecasts for Chinook salmon stocks, and the timing of the action relative to the length of the season, as well as the catch to date, and determined that this inseason action is necessary to meet management and conservations goals for the 2023–2024 management measures. Inseason action to modify bag limits is authorized under 50 CFR 660.409(b)(1)(iii).

Inseason Action #16

Description of the action: Inseason action #16 modifies the NOF ocean salmon troll commercial fishery in the area between the U.S./Canada border and Cape Falcon. The landing and possession limit is decreased from 50 Chinook salmon per vessel per landing week to 35 Chinook salmon per vessel per landing week (Thursday–Wednesday).

Effective date: Inseason action #16 took effect on July 13, 2023, at 12:01 a.m., and remains in effect until September 30, 2023, at 11:59 p.m.

Reason and authorization for the action: Inseason action #16 was necessary to slow the rate of Chinook salmon catch in order to preserve the length of the salmon fishing season by setting a lower landing and possession limit. The RA considered the 2023 abundance forecasts for Chinook salmon stocks, the timing of the action relative to the length of the season, and determined that this inseason action is necessary to meet management and conservations goals for the 2023–2024 management measures. This inseason action modified quotas and/or fishing seasons under 50 CFR 660.409(b)(1)(i).

All other restrictions and regulations remain in effect as announced for the 2023 ocean salmon fisheries (88 FR 30235, May 11, 2023; 88 FR 44737, July 13, 2023).

The RA determined that these inseason actions were warranted based on the best available information on Pacific salmon abundance forecasts, landings and effort patterns to date, anticipated fishery effort and projected catch, and the other factors and considerations set forth in 50 CFR 660.409. The states and tribes manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone (3–200 nautical miles; 5.6–370.4 kilometers) off the coasts of the States of Washington, Oregon, and California consistent with these Federal actions. As provided by the inseason notice procedures at 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the time the actions became effective, by telephone hotline numbers 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 kHz.

Classification

NMFS issues these actions pursuant to section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). These actions are authorized by 50 CFR 660.409, which was issued pursuant to section 304(b) of the MSA, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(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. Prior notice and opportunity for public comment on this action was impracticable because NMFS had insufficient time to provide for prior notice and the opportunity for

public comment between the time Chinook and coho salmon abundance, catch, and effort information were developed and fisheries impacts were calculated, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best scientific information available. As previously noted, actual notice of the regulatory action was provided to fishers through telephone hotlines and radio notifications. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (88 FR 30235, May 11, 2023), the Pacific Salmon Fishery Management Plan (FMP), and regulations implementing the FMP under 50 CFR 660.409 and 660.411.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date, as a delay in effectiveness of this action would allow fishing at levels inconsistent with the goals of the FMP and the current management measures.

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

Dated: July 28, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–16516 Filed 8–2–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 148
Thursday, August 3, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2023–0080]

RIN 3150–AK98

List of Approved Spent Fuel Storage Casks: NAC Multi-Purpose Canister (NAC–MPC) System, Certificate of Compliance No. 1025, Renewal of Initial Certificate and Amendment Numbers 1 Through 8

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage regulations by revising the NAC Multi-Purpose Canister (NAC–MPC) System listing within the ''List of approved spent fuel storage casks'' to renew, for 40 years, the initial certificate and Amendment Nos. 1 through 8 of Certificate of Compliance No. 1025. The renewal of the initial certificate and Amendment Nos. 1 through 8 would revise the certificate of compliance's conditions and technical specifications to address aging management activities related to the structures, systems, and components important to safety of the dry storage system to ensure that these will maintain their intended functions during the period of extended storage operations.

DATES: Submit comments by September 5, 2023. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit your comments, identified by Docket ID NRC–2023–0080, at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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: Chris Markley, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–6293, email: *Christopher.Markley@nrc.gov* and Andrew Carrera, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–1078, email: *Andrew.Carrera@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0080 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–2023–0080. Address questions about NRC dockets to Dawn Forder, telephone: 301–415–3407, email: *Dawn.Forder@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

Please include Docket ID NRC–2023–0080 in your comment submission. The NRC requests that you submit comments through the Federal rulemaking website at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. The direct final rule will become effective on October 17, 2023. However, if the NRC receives any significant adverse comment by September 5, 2023, then the NRC will publish a document that

withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For a more detailed discussion of the proposed rule changes and associated analyses, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the Nuclear Waste Policy Act states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule that added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on April 10, 2000 (64 FR 12444), that approved the NAC Multi-Purpose Canister (NAC–MPC) System design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1025. On August 28, 2007 (72 FR 49561), the NRC amended the scope of the general licenses issued under § 72.210 to include the storage of spent fuel in an independent spent fuel storage installation at power reactor sites to persons authorized to possess or operate nuclear power reactors under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' On February 16, 2011 (76 FR 8872), the NRC amended subparts K and L in 10 CFR part 72, to extend and clarify the term limits for certificates of compliance and revised the conditions for spent fuel storage casks renewals, including adding requirements for the safety analysis report to include time-limited aging analyses and a description of aging management programs. The NRC also clarified the terminology used in the regulations to use ''renewal'' rather than ''reapproval'' to better reflect that extending the term of a currently approved cask design is based on the cask design standards in effect at the time the certificate of compliance was approved rather than current standards.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

V. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

Document	ADAMS Accession No./ **Federal Register** citation
Preliminary Certificates of Compliance and Preliminary Conditions for Cask Use and Technical Specifications	
Preliminary Renewed Initial Certificate of Compliance No. 1025	ML22297A272.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Initial Certificate	ML22297A281.
Preliminary Renewed Certificate of Compliance No. 1025, Renewed Amendment No. 1	ML22297A273.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Amendment No. 1	ML22297A282.
Preliminary Renewed Certificate of Compliance No. 1025, Renewed Amendment No. 2	ML22297A274.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Amendment No. 2	ML22297A283.
Preliminary Renewed Certificate of Compliance No. 1025, Renewed Amendment No. 3	ML22297A275.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Amendment No. 3	ML22297A284.
Preliminary Renewed Certificate of Compliance No. 1025, Renewed Amendment No. 4	ML22297A276.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Amendment No. 4	ML22297A285.
Preliminary Renewed Certificate of Compliance No. 1025, Renewed Amendment No. 5	ML22297A277.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Amendment No. 5	ML22297A286.
Preliminary Renewed Certificate of Compliance No. 1025, Renewed Amendment No. 6	ML22297A278.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Amendment No. 6	ML22297A287.
Preliminary Renewed Certificate of Compliance No. 1025, Renewed Amendment No. 7	ML22297A279.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Amendment No. 7	ML22297A288.
Preliminary Renewed Certificate of Compliance No. 1025, Renewed Amendment No. 8	ML22297A280.

Document	ADAMS Accession No./ **Federal Register** citation
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Amendment No. 8	ML22297A289.
Preliminary Safety Evaluation Report	
Preliminary Final Safety Evaluation Report for Renewal of Initial Certificate and Amendments Nos. 1 through 8, of CoC No. 1025 for the NAC Multi-Purpose Canister.	ML22297A270.
Environmental Documents	
Environmental Assessment for Proposed Rule Entitled, ''Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites.'' (1989).	ML051230231.
''Environmental Assessment and Finding of No Significant Impact for the Final Rule Amending 10 CFR Part 72 License and Certificate of Compliance Terms'' (2010).	ML100710441.
Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel: Final Report (NUREG–2157, Volumes 1 and 2) (2014).	ML14198A440 (package).
''Storage of Spent Fuel In NRC-Approved Storage Casks at Power Reactor Sites'' Final Rule (July 18, 1990)	55 FR 29181.
NAC Multi-Purpose Canister (NAC–MPC) System, Certificate of Compliance No. 1025, Renewal Application Documents	
Preliminary Renewal Package for the NAC–MPC System, CoC 1025	ML22297A269 (Package).
NAC International—Submission of a Request to Renew the U.S. Nuclear Regulatory Commission Certificate of Compliance No. 1025 for the NAC–MPC Cask System.	ML19357A178 (package).
NAC International, Inc.—Responses to the Nuclear Regulatory Commission's (NRC) Request for Additional Information for the Request to Renew the NRC Certificate of Compliance No. 1025 for the NAC–MPC Cask System.	ML21231A154 (package).
NAC, Submittal of Responses to the Nuclear Regulatory Commission's (NRC) Request for Additional Information for the Request to Renew the NRC Certificate of Compliance No. 1025 for the NAC–MPC Cask System.	ML22077A831 (package).
Supplement to the Submission of Responses to the Nuclear Regulatory Commission's (NRC) Request for Additional Information for the Request to Renew the NRC Certificate of Compliance No. 1025 for the NAC–MPC Cask System.	ML22203A127.
User Need For Rulemaking For Certificate Of Compliance Renewal, Initial Issue (Amendment Number 0), Amendment Numbers 1 Through 8 To The NAC Multipurpose Canister System.	ML22297A271.
Other Documents	
''Standard Review Plan for Renewal of Specific Licenses and Certificates of Compliance for Dry Storage of Spent Nuclear Fuel.'' NUREG–1927, Revision 1. Washington, DC. June 2016.	ML16179A148.
''Managing Aging Processes in Storage (MAPS) Report.'' Final Report. NUREG–2214. Washington, DC. July 2019.	ML19214A111.
''Agreement State Program Policy Statement; Correction'' (October 18, 2017)	82 FR 48535.
Regulatory Guide 3.76, Revision 0, ''Implementation of Aging Management Requirements for Spent Fuel Storage Renewals.'' July 2021.	ML21098A022.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2023–0080.

Dated: July 18, 2023.

For the Nuclear Regulatory Commission.

Daniel H. Dorman,

Executive Director for Operations.

[FR Doc. 2023–16161 Filed 8–2–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–BM12

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Amendment 52

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

ACTION: Announcement of availability of fishery management plan amendment; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) submitted Amendment 52 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP) for review, approval, and implementation by NMFS. If approved by the Secretary of Commerce, Amendment 52 to the FMP would revise the acceptable biological catch (ABC), overfishing limit (OFL), annual catch limits (ACLs), annual optimum yield (OY), sector allocations, commercial longline component fishing season, and recreational accountability measures (AMs) for golden tilefish. For blueline tilefish, Amendment 52 would reduce the recreational bag limit, modify the possession limits, and revise the recreational AMs. The purpose of Amendment 52 is to respond to the most recent stock assessment for golden tilefish and to prevent recreational landings from exceeding the recreational ACLs for golden tilefish and blueline tilefish.

DATES: Written comments must be received on or before October 2, 2023.

ADDRESSES: You may submit comments on Amendment 52, identified by ''NOAA–NMFS–2023–0082,'' by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the

Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter ''NOAA–NMFS–2023–0082'', in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Karla Gore, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 52, which includes a fishery impact statement and a regulatory impact review, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/amendment-52-changes-catch-levels-allocations-accountability-measures-and-management.*

FOR FURTHER INFORMATION CONTACT: Karla Gore, telephone: 727–824–5305, or email: *karla.gore@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to the Secretary of Commerce (the Secretary) for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan or amendment, publish an announcement in the **Federal Register** notifying the public that the fishery management plan or amendment is available for review and comment.

The Council developed the FMP that is being revised by Amendment 52. If approved, Amendment 52 would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

The Council and NMFS manage the snapper-grouper fishery, including golden tilefish and blueline tilefish, in Federal waters from North Carolina south to the Florida Keys in the South Atlantic under the FMP. The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the Nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

All weights described in this document are in gutted weight, unless otherwise specified.

The South Atlantic stock of golden tilefish was first assessed through the Southeast Data, Assessment, and Review (SEDAR) process in 2004 (SEDAR 4). In response to the assessment, the Council submitted management measures in Amendment 13C to the FMP. The final rule to implement Amendment 13C specified a commercial quota for golden tilefish of 295,000 lb (133,810 kg); a commercial trip limit for golden tilefish of 4,000 lb (1,814 kg), and if 75 percent of the quota is landed on or before September 1, then a reduction to 300 lb (136 kg); and a recreational bag limit of one golden tilefish per person per day included within the five-grouper aggregate bag limit (71 FR 55096, September 21, 2006). The Council submitted sector allocations for golden tilefish in Amendment 17B to the FMP, allocating 97 percent of the ACL to the commercial sector and 3 percent of the ACL to the recreational sector. In addition, for golden tilefish, Amendment 17B contained management measures that established: a total ACL of 291,566 lb (132,252 kg), a commercial ACL of 282,819 lb (128,285 kg), and a recreational ACL of 1,578 fish; commercial and recreational AMs; and a longline endorsement for the commercial component of golden tilefish (75 FR 82280, December 30, 2010).

In 2011, a new stock assessment was completed for golden tilefish (SEDAR 25 2011) and the Council submitted Regulatory Amendment 12 to the FMP in response to the assessment. In Regulatory Amendment 12, the total ACL was set at 558,036 lb (253,121 kg), the existing allocations were applied to revise the sector ACLs to 541,295 lb (245,527 kg) for the commercial sector and 3,019 fish for the recreational sector, and the recreational annual catch target and sector AMs were revised (77 FR 61295, October 9, 2012). In Amendment 18B to the FMP, the golden tilefish commercial ACL was divided between two commercial fishing gear components, giving 75 percent of the ACL to the longline component with a 4,000 lb (1,814 kg) trip limit and 25 percent of the ACL to the hook-and-line component with a 500 lb (227 kg) trip limit (78 FR 23858, April 23, 2013).

In 2016, an update to the SEDAR 25 stock assessment indicated that golden tilefish was undergoing overfishing (SEDAR 25 Update 2016). Following two interim rules that immediately reduced the overfishing (83 FR 65, January 2, 2018; 83 FR 28387, June 19, 2018), the Council submitted longer-term measures in Regulatory Amendment 28 to the FMP that reduced the golden tilefish ACLs. The existing allocations were applied to revise the sector ACLs to 331,740 lb (150,475 kg) for the commercial sector (further divided with 75 percent to the longline component and 25 percent to the hook-and-line component) and 2,316 fish for the recreational sector (83 FR 62508, December 4, 2018).

The Council submitted Amendment 52 to the FMP in response to a new stock assessment for golden tilefish. The new assessment, SEDAR 66, was completed in 2020 and it indicated that the stock was not undergoing overfishing and was not overfished. SEDAR 66 includes recreational landings estimates using the Marine Recreational Information Program (MRIP) Fishing Effort Survey (FES), as discussed below. The revised catch levels recommended by the Council in Amendment 52 are based on their Scientific and Statistical Committee's (SSC) recommended ABC and the results of SEDAR 66. The Council received the results of the assessment and the SSC's recommendations for the OFL and ABC at the June 2021 Council meeting.

In response to golden tilefish longline vessel fishermen's concerns about avoiding oversupplying the market in the first part of January and allowing commercial longline vessels to remain fishing for golden tilefish during the Lenten season when prices tend to be relatively high, Amendment 52 would change the starting date of the fishing season for the commercial longline component from January 1st to January 15th. In addition, the rule would revise the recreational AM to help keep the recreational sector within its ACL.

As for blueline tilefish, revising some management measures would help keep the recreational sector within its ACL. The most recent stock assessments for blueline tilefish were completed in 2017 and did not indicate that the stock was undergoing overfishing or overfished. However, because the recreational

landings for blueline tilefish managed under the FMP exceeded the recreational ACL every year from 2015–2020, the Council decided to revise certain recreational management measures to help keep the recreational sector within its ACL.

NMFS has preliminarily determined that the actions in Amendment 52 are based on the best scientific information available, and are intended to achieve OY while minimizing, to the extent practicable, adverse social and economic effects, pending further review following public comment.

Actions Contained in Amendment 52

Amendment 52 would modify management of South Atlantic golden tilefish and blueline tilefish. For golden tilefish, Amendment 52 would revise the ABC, OFL, ACLs, annual OY, sector allocations, the commercial longline component fishing season, and recreational AMs. For blueline tilefish, Amendment 52 would reduce the recreational bag limit, modify the possession limits, and revise the recreational AMs.

Golden Tilefish ABC and Annual OY

The current OFL and ABC are inclusive of MRIP Coastal Household Telephone Survey (CHTS) estimates of private recreational and charter landings. The Council's SSC reviewed the latest stock assessment (SEDAR 66) and recommended new OFL and ABC levels as determined by SEDAR 66. The assessment and associated SSC recommendations incorporated the revised estimates for recreational catch and effort from the MRIP Access Point Angler Intercept Survey (APAIS) and the updated FES. MRIP began incorporating a new survey design for APAIS in 2013 and replaced the CHTS with FES in 2018. Prior to the implementation of MRIP in 2008, recreational landings estimates were generated using the Marine Recreational Fisheries Statistics Survey (MRFSS). As explained in Amendment 52, total recreational fishing effort estimates generated from MRIP FES are generally higher than both the MRFSS and MRIP CHTS estimates. This difference in estimates is because MRIP FES is designed to more accurately measure fishing activity, not because there was a sudden increase in fishing effort. The MRIP FES is considered a more reliable estimate of recreational effort by the Council's SSC, the Council, and NMFS, and more robust compared to the MRIP CHTS method. The new ABC and OFL recommendations within Amendment 52 also represent the best scientific information available as determined by the SSC.

The OY for golden tilefish would be specified on an annual basis and would be set equal to the ABC and total ACL, in accordance with the guidance provided in the Magnuson-Stevens Act National Standard 1 Guidelines at 50 CFR 600.310(f)(4)(iv).

Golden Tilefish Total ACL

As implemented through Regulatory Amendment 28 to the FMP, the current total ACL and annual OY for golden tilefish are equal to the current ABC of 342,000 lb (155,129 kg)(83 FR 62508, December 4, 2018). In Amendment 52, the ABC would be revised based on SEDAR 66 and the recommendation of the SSC, and set the ABC, ACL, and annual OY equal to each other.

Amendment 52 would revise the total ACL and annual OY equal to the recommended ABC of 435,000 lb (197,313 kg) for 2023; 448,000 lb (203,209 kg) for 2024; 458,000 lb (207,745 kg) for 2025; 466,000 lb (211,374 kg) for 2026 and subsequent fishing years.

Golden Tilefish Sector Allocations and ACLs

Amendment 52 would revise the sector allocations and sector ACLs for golden tilefish. The current sector ACLs for golden tilefish are based on the commercial and recreational allocations of the total ACL at 97 percent and 3 percent, respectively. The current allocations are based on the allocation formula (ACL = ((mean landings 2006–2008)*0.5)) + ((mean landings 1986–2008)*0.5)) adopted by the Council in the Comprehensive ACL Amendment to the FMP, which considered past and present participation (77 FR 15915, March 16, 2012). Those allocations were established based on balancing long-term catch history with more recent catch history to achieve a fair and equitable method to allocate fishery resources.

The revised golden tilefish sector allocations in Amendment 52 would result in commercial and recreational allocations of 96.70 percent and 3.30 percent, respectively. The revised sector allocations were determined by applying the allocation formula (described above) to the recreational MRIP FES estimates used in SEDAR 66. Utilizing these revised recreational estimates would result in a slight shift of allocation to the recreational sector, with the percentages of annual catch increasing from the current 3 percent to the proposed 3.30 percent. In proposing this change, the Council considered the limited recreational effort for, and harvest of, golden tilefish, and found that allocating 3.30 percent of the revised total ACL for golden tilefish to the recreational sector would be a fair and equitable allocation that is reasonably calculated to promote conservation, and that does not give any entity an excessive share of harvest privileges based on the historical and current harvest of golden tilefish. In addition, this allocation division encourages a rational and well-managed use of the golden tilefish resource that also optimizes the social and economic benefits.

The commercial ACLs (commercial sector hook-and-line and longline components combined) would be 420,645 lb (190,801 kg) for 2023; 433,216 lb (196,503 kg) for 2024; 442,886 lb (200,890 kg) for 2025; and 450,622 lb (204,399 kg) for the 2026 and subsequent fishing years.

The recreational ACLs (in numbers of fish) would be 2,559 for the 2023 fishing year; 2,635 for the 2024 fishing year; 2,694 for the 2025 fishing year; 2,741 for the 2026 and subsequent fishing years.

Golden Tilefish Commercial Component Allocations

As established in Amendment 18B to the FMP, the commercial ACL is allocated between two gear components: 25 percent is allocated to the hook-and-line component and 75 percent to the longline component (77 FR 23858, April 23, 2013). The allocation percentages between the hook-and-line and longline components were not modified in Amendment 52, but the hook-and-line and longline component ACLs (quotas) would be revised based on the revised commercial ACL. The commercial hook-and-line ACL would be 105,161 lb (47,700 kg) for 2023; 108,304 lb (49,126 kg) for 2024; 110,722 lb (50,223 kg) for 2025; and 112,656 lb (51,100 kg) for 2026 and subsequent years.

The ACLs for the longline component would be 315,484 lb (143,101 kg)for 2023; 324,912 lb (147,378 kg) for 2024; 332,165 lb (150,668 kg) for 2025; and 337,967 lb (153,299 kg) for the 2026 and subsequent fishing years.

Golden Tilefish Commercial Longline Component Fishing Season

Amendment 52 would change the start date for the fishing season for the commercial longline component from January 1st to January 15th. A closed season would be established for the commercial longline component annually from January 1 through January 14. Starting the commercial season on January 15th for the longline component would help to avoid oversupplying the market in the first

part of January and allow commercial longline vessels to remain fishing for golden tilefish during the Lenten season when prices tend to be relatively high.

Blueline Tilefish Recreational Bag and Possession Limits

In August 2016, Regulatory Amendment 25 to the FMP established the current recreational bag limit of three fish per person per day (81 FR 45245, July 13, 2016). As discussed above, recreational landings for blueline tilefish have exceeded the recreational ACL every year from 2015–2020. Amendment 52 would reduce the recreational bag limit for blueline tilefish from three to two fish per person per day to help prevent recreational landings from exceeding the recreational ACL in future years.

Additionally, the captain and crew of a for-hire vessel with a valid Federal South Atlantic Charter/Headboat Snapper-Grouper Permit are currently allowed to retain bag limit quantities of all snapper-grouper species during the open recreational season. In addition to reducing the recreational bag and possession limits to two fish per person per day, Amendment 52 would prohibit the retention of blueline tilefish by the captain and crew. A bag limit of two blueline tilefish per person per day and prohibiting the retention of the bag limit by captain and crew would result in an overall 12.2 percent reduction in harvest for the recreational sector. Reducing the blueline tilefish bag limit from three to two fish per person per day and prohibiting retention of the bag limit by for-hire captain and crew would, in combination, be expected to help keep the recreational landings of blueline tilefish within the recreational ACL.

Golden Tilefish and Blueline Tilefish Recreational AMs

Amendment 52 would also revise the recreational AMs for golden tilefish and blueline tilefish. The current recreational AMs for golden tilefish were established through the final rule for Amendment 34 to the FMP (81 FR 3731, January 22, 2016). The current recreational AMs for blueline tilefish were established through the final rule for Amendment 32 to the FMP (80 FR 16583, March 30, 2015). The current AMs for both species include an inseason closure for the remainder of the fishing year if recreational landings reach or are projected to reach their respective recreational ACL. The current post-season AMs state if the recreational ACL is exceeded, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and during that following fishing year, if the total ACL is exceeded and the species is overfished, the length of the recreational fishing season is reduced and the recreational ACL is reduced by the amount of the recreational ACL overage.

Amendment 52 would revise the recreational AMs for both golden tilefish and blueline tilefish to remove the current inseason closure if the recreational ACL is reached or projected to be reached and the post-season AM that is tied to the overfished status of the stock.

The revised recreational AM would have NMFS projecting the length of the recreational season based on catch rates from the previous fishing year to determine when the recreational ACL would be expected to be met. NMFS would announce the length of the recreational season and its ending date annually in the **Federal Register**.

The current AMs would be revised because of the time delay of when recreational landings information becomes available to use for inseason AM actions for species with short fishing seasons or relatively small amounts of fish. For blueline tilefish, the current recreational fishing season is 4 months long, from May through August, and the recreational ACL for golden tilefish is 2,316 fish. In these circumstances, the current inseason AMs would not be effective in keeping landings from exceeding the recreational ACL. As previously discussed, the recreational landings for blueline tilefish exceeded the recreational ACL every year from 2015–2020. The golden tilefish recreational ACL has also frequently been exceeded, with the recreational sector exceeding its ACL every year since 2010, except in 2014 and 2017.

The current post-season recreational AMs that would apply corrective action for ACL overages were not being triggered because they were tied to a determination that the stock was considered to be overfished, and neither blueline nor golden tilefish is considered to be overfished. Consequently, any overages of the recreational ACL would be likely to continue to occur.

In addition, the Magnuson-Stevens Act Guidelines under National Standard 1 advise Councils to reevaluate the system of ACLs and AMs when overages of a stock's ACL occur more than once in 4 consecutive years. The purpose of the revised AMs are to prevent recreational landings from exceeding the respective recreational ACLs for both golden tilefish and blueline tilefish. The revised recreational AMs would be more effective at restraining landings to the recreational ACL. In Amendment 52, for blueline tilefish, the Council considered it prudent to both modify the recreational AM and reduce the recreational retention limit to further ensure recreational landings would not exceed the ACL. Amendment 52 would not adjust commercial AMs for either species.

Proposed Rule for Amendment 52

A proposed rule to implement Amendment 52 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule for Amendment 52 to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Council has submitted Amendment 52 for Secretarial review, approval, and implementation. Comments on Amendment 53 must be received by October 2, 2023. Comments received during the respective comment periods, whether specifically directed to Amendment 52 or the proposed rule, will be considered by NMFS in the decision to approve, partially approve, or disapprove, Amendment 52. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: July 28, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–16488 Filed 8–2–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 88, No. 148
Thursday, August 3, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FTPP–23–0032]

Notice of Funds Availability

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Secretary hereby announces the availability of funding for cotton merchandisers under the Pandemic Assistance for Cotton Merchandisers (PACM) Program. PACM will be administered by the Agricultural Marketing Service (AMS) and is authorized by the Consolidated Appropriations Act, 2023. The funds are intended to reduce the economic impacts of COVID–19 and other supply chain disruptions that impacted cotton merchandisers. Interested entities may apply for program participation by submitting the application, and required supporting documentation, available on our website at *www.ams.usda.gov/services/warehouse/cotton-program.*

DATES:

Eligibility Period: AMS will accept claims from cotton merchandisers for the period beginning March 1, 2020, and ending December 29, 2022.

Claim Period: All claims must be submitted by 11:59 p.m. Eastern Time, September 29, 2023, to be considered eligible for review and determination of PACM program benefits.

Funding Expiration: Funds under this statutory authority must be expended no later than December 29, 2023.

ADDRESSES: Applications are available on the AMS website at *https://www.ams.usda.gov/services/warehouse/cotton-program* or via email at *PACM@usda.gov.* Applications and supporting documentation are required to be uploaded to *https://wcmd.app.box.com/f/5a6db73028e54d9982e1e85d193d1b16.*

FOR FURTHER INFORMATION CONTACT: Dan Schofer, Program Manager, Warehouse and Commodity Management Division, (202) 720–0219, *PACM@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background: Division N, Title VII, Section 751 of The Consolidated Appropriations Act, 2021 (CAA 2021; Pub. L. 116–260), provided $11,187,500,000 to prevent, prepare for, and respond to coronavirus by providing support for agricultural producers, growers, and processors impacted by coronavirus. Section 601(a)(4) of Division HH of the CAA 2023, using unobligated balances from the CAA 2021, made available $100,000,000 for PACM, of which $99 million is available for further pandemic relief to cotton merchandisers. The funding for this program was excepted from the recissions of Division B, Title I, Section 4 of the Fiscal Responsibility Act (Pub. L. 118–5).

Eligible Cotton: Cotton eligible for payment under PACM must have a Permanent Bale Identification (PBI) number and have been purchased from, or marketed on behalf of, a United States cotton producer during the eligibility period of March 1, 2020, to December 29, 2022.

Eligible Participants: To be eligible to receive a payment under PACM, cotton merchandisers must provide a certification attesting to, and records indicating that, during the eligibility period (March 1, 2020, to December 29, 2022), cotton was purchased or marketed on behalf of a United States cotton producer and certify that they are responsible for final sale to the domestic end user or that they are the exporter of the cotton and that they bore the majority of the transportation and marketing costs. *Final sale* is defined as the final transaction wherein a contract for eligible cotton has been executed, directly or indirectly, transferring title or custody of cotton to the domestic end user or exporter. *Cotton Merchandisers* are entities that are regularly engaged in the business of buying and selling raw cotton for manufacturing by an end user. All Cotton Merchandisers must be organized under the laws of a state in the United States and must be currently active and in good standing according to the applicable registration authority, as well as an active registration with the System for Award Management (SAM) (*www.sam.gov*) to receive program payments. SAM is an official website of the U.S. Government. There is no cost to use SAM.

Claims Process: Claim Submission Requirements: Eligible cotton merchandisers must submit an application, available at *https://www.ams.usda.gov/services/warehouse/cotton-program,* via Secure Upload at *https://wcmd.app.box.com/f/5a6db73028e54d9982e1e85d193d1b16* attesting to entity information and the total number of bales claimed. In addition, supplemental information must be submitted in a Comma-Separated Values (csv) file, including Permanent Bale Identification (PBI) number, crop year, receipt number, shipping mark, shipment date, and last storing warehouse code or identifier.

Claim Validation: There will be one payment only per eligible bale of cotton. Merchandisers will self-certify their volume of bales and provide the unique Permanent Bale Identification (PBI) with their applications. While conducting eligibility reviews, AMS may request additional documentation to substantiate claims.

Payment: Payment Eligibility: Claimants must have an active registration with the System for Award Management (SAM) (*www.sam.gov*) to receive program payments. SAM is an official website of the U.S. Government. There is no cost to use SAM.

Payment Calculation: The CAA authorizes up to ''$100,000,000, to be derived from the unobligated balances of amounts made available under section 751 of division N of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260)'' in pandemic assistance. The CAA also allows the Secretary to use one percent of the total amount ''for administrative costs necessary to carry out this program.'' The CAA grants the Secretary wide discretion to make payment determinations and rates that take into account the economic impacts of COVID–19 and other supply chain disruptions. Using that discretion, the Secretary has determined that a tiered approach will most efficiently and effectively address these issues in a manner contemplated by the statute.

The Secretary will authorize payments for validated claims (projected), per merchandiser, of $5 per bale for the first 500,000 bales; $2.50 per bale for bales 500,001 to one million;

and $1.25 per bale above one million bales. Once the claim period is closed and claims have been validated, final tier rates will be adjusted to spend the full funds while maintaining the tier proportions.

Claim and Certifications: AMS will send notification of the amount certified for payment to the email address indicated on the application. If the claimant disputes the amount of the payment or has questions, they will have 14 days after receipt of notification of payment calculation to contact AMS to review the claim. Any request for reconsideration or other inquiries should be directed to *PACM@usda.gov.* If the issues are not resolved, the claimant may seek review and issuance of a final agency decision by the National Appeals Division pursuant to 7 U.S.C. 6991.

Congressional Review Act Requirements: USDA has determined that this action is economically insignificant because expenditures are less than $100 million and will not result in a major increase in cost for consumers, industry, Federal, State, or local government agencies. Furthermore, the beneficiaries of this rule have been significantly impacted by the COVID–19 outbreak and disaster events, which has resulted in significant declines in demand and supply chain disruptions. USDA finds that notice and public procedure are contrary to the public interest. Therefore, even though this rule could be determined to be a major rule for purposes of the Congressional Review Act, USDA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Accordingly, this rule is effective upon publication in the **Federal Register**.

Paperwork Reduction Act Requirements: In compliance with the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the information collection request has been approved by OMB under the control number of 0503–0028, USDA Generic Solution for Solicitation for Funding Opportunity Announcements. AMS will collect the information from cotton merchandisers to qualify for the payment to mitigate the economic impacts of COVID–19 and other supply chain disruptions. PACM is a one-time funding as described in this NOFA.

Federal Assistance Programs: The title and number of the Federal assistance programs, as found in the Assistance Listing [1] to which this document applies is 10.191, Pandemic Assistance for Cotton Merchandisers (PACM).

USDA Non-Discrimination Policy: In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-aprogram-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–16492 Filed 8–2–23; 8:45 am]

BILLING CODE P

[1] See *https://sam.gov/content/assistance-listings.*

DEPARTMENT OF AGRICULTURE

Farm Service Agency

[Docket ID FSA–2023–0005]

Application Fast Track Pilot Program

AGENCY: Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: The Farm Service Agency (FSA) is announcing a pilot program called ''Application Fast Track'' that will expedite the processing of direct Operating Loans (OL) and Farm Ownership Loans (FO) to family farmers and ranchers if qualified. The Application Fast Track Pilot Program (AFT) provides an alternative underwriting process for applicants that meet certain financial benchmarks. AFT will be available in selected pilot office locations beginning August 7, 2023, and will be available in all locations nationwide beginning January 1, 2024. AFT will run through September 30, 2024. The Consolidated Farm and Rural Development Act (CONACT) authorizes pilot projects of limited scope and duration to evaluate processes and techniques to improve program efficiency and effectiveness.

DATES: *Comment due date:* We will consider comments on the AFT as described in this notice that we receive by: October 2, 2023.

ADDRESSES: You may submit comments, identified by FSA docket number FSA–2023–0005 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* AFT Comments—Deputy Administrator for Farm Loan Programs, Farm Service Agency, 1400 Independence Ave. SW, Stop 0522, Room 3605, Washington, DC 20250–0522.
- *Hand Delivery/Courier:* Houston Bruck, Assistant to the Deputy Administrator for Farm Loan Programs, Farm Service Agency, 1400 Independence Ave. SW, Stop 0522, Room 3605, Washington, DC 20250–0522.

FSA will post all comments on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Houston Bruck; telephone: (202) 650–7874; or by email: *houston.bruck@usda.gov.* Individuals who require alternative means for communication should contact the USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Background

FSA makes and services a variety of direct and guaranteed loans to farmers who are temporarily unable to obtain private commercial credit. FSA also provides direct loan borrowers with credit counseling and supervision, so they have a better chance for success. FSA loan applicants are often Beginning Farmers (BF), some of whom do not qualify for commercial loans because of insufficient net worth, or established farmers who have suffered financial setbacks due to natural disasters or economic downturns. FSA loans are intended to be tailored to the specific needs of an applicant and may be used for a variety of purposes including the financing of agricultural production and to purchase livestock, equipment, and farmland. FSA staff are statutorily required to evaluate the farm operating plan and financial situation of each applicant. The farm operating plan assesses various aspects of the operation, including the financial viability of each operation requesting loan assistance.

FSA underwriting processes require a thorough evaluation of each farm operating plan to ensure eligibility, security and feasibility criteria are satisfied, and loan applications are required to be processed within 60 days of receipt of a complete application. Completing a feasibility evaluation based on an applicant's cash flow budget is often a time-consuming undertaking that adds significant time to the processing of a loan application. Additionally, the CONACT (Pub. L. 92–419; 7 U.S.C. 1921–2009cc–18) requires FSA loan underwriting to be completed in a manner similar to commercial lending methods. FSA policy has historically provided for the completion of an in-depth cash flow evaluation for all applicants. An extensive manual underwriting process is often appropriate, as FSA borrowers frequently are at an elevated level of financial risk, which resulted in the inability to obtain commercial credit at reasonable rates and terms. However, commercial lenders increasingly rely on data analytics to develop alternative underwriting methods to streamline the financial viability evaluation of certain operations while minimizing the risk of loan default.

To capture loan making efficiencies that result from innovative underwriting methods that rely on data analytics, FSA has developed and is piloting an alternative method of evaluating financial viability designed specifically to address the unique characteristics of the FSA loan portfolio and satisfy the unique goals and requirements of the Farm Loan Programs. This innovative process is referred to as AFT, and is modeled after similar scoring tools that have been successfully used by commercial lenders for many years. To continue effective stewardship of taxpayer resources, the AFT underwriting process is designed to improve processing times while ensuring portfolio performance and loan default rates remain constant. To achieve this outcome, applicants who meet certain financial benchmarking criteria will be qualified for an expedited underwriting evaluation available through AFT.

Using the actual portfolio performance data of over 100,000 direct loans, FSA analyzed hundreds of potential variables to identify commonalities of loans with strong repayment history. The analysis identified several financial variables and minimum thresholds that are statistically reliable indicators of whether or not a debt will be repaid according to the terms of the loan. The identified benchmark variables were modeled with optimized ranges and weights and used to develop a scoring tool that can identify with over 92 percent accuracy the probability of successful loan repayment for approximately a quarter of all applications. Importantly, the AFT scoring tool does not rely on projected cash flow budget data, which provides the opportunity for the AFT scoring tool to be an alternative method for FSA to reliably evaluate an applicant's financial viability and likelihood of repayment. For those customers who meet the minimum scoring threshold, FSA is provided with adequate assurance of an applicant's ability to successfully repay the FSA loan. Accordingly, FSA staff will not have to rely on traditional underwriting evaluation methods that require time-consuming income and expense validation of a projected cash flow budget. The AFT underwriting process is estimated to improve application processing timeframes by more than a week for those estimated 25 percent of customers who qualify for AFT under these AFT benchmarks, which under full implementation would translate to a projected annual time savings of 70,000 staff hours nationwide. This time savings will allow existing staffing resources to better assist all other applicants timelier.

As AFT is a pilot program to evaluate the administrative effectiveness of this new process, FSA has identified a limited number of targeted USDA service centers for participation in the initial implementation of the pilot beginning August 7, 2023 (see Initial Pilot Locations section below). Limiting the number of initial pilot locations will allow for a control group where AFT is not implemented, enabling accurate and actionable analysis of data collected on the AFT process. FSA will evaluate the time savings, number of producers qualifying, and user functionality of the AFT process in the initial pilot offices. If the anticipated benefits are realized, AFT will be implemented to all USDA service centers nationwide beginning January 1, 2024. Expanding the number of pilot locations will enable FSA to further evaluate the effectiveness of AFT when the scope of AFT is limited to a pilot program benchmark of 25 percent of applicants. If anticipated benefits are not realized, FSA will modify or terminate AFT through a subsequent notice in the **Federal Register** prior to January 1, 2024.

The authority to conduct AFT is provided in section 333D of the CONACT (7 U.S.C. 1983d), which authorizes pilot projects of limited scope and duration to evaluate processes and techniques to improve program efficiency and effectiveness.

AFT

AFT will expedite the processing of direct OLs and FOs to qualified family farmers and ranchers by providing an alternative underwriting process for applicants that meet certain financial benchmarks. While application submission, eligibility, and security requirements are unaffected by AFT, the feasibility evaluation for each loan application will be improved. Specifically, an initial feasibility assessment of each loan application will be conducted based on financial benchmarking. Applications that satisfy certain benchmark thresholds will be determined to meet the AFT standards and will not be subject to the traditional feasibility evaluation. If a loan application does not satisfy the AFT benchmarking criteria, additional feasibility evaluation will be completed on the loan application in accordance with existing loan making regulations. AFT will be effective August 7, 2023, and will continue through September 30, 2024.

Initial Pilot Locations

To adequately evaluate the effectiveness of the AFT underwriting method, FSA has targeted USDA service centers from each state and Puerto Rico as initial pilot locations for AFT. FSA coordinated with the National Agricultural Statistics Service (NASS) to

identify 150 initial pilot locations that provide a statistically relevant random sample of all FSA service centers with 16 additional offices selected by FSA to facilitate specific state-level input on the effectiveness of the AFT processes. FSA will closely monitor the implementation of AFT in the initial pilot locations to validate the anticipated efficiencies and identify areas for improvement. Applicants whose standard county code falls within the jurisdiction of one of the identified 166 initial pilot locations will be considered for AFT beginning August 7, 2024. Beginning January 1, 2024, AFT will be implemented in all USDA service centers nationwide unless the projected AFT benefits are not realized, in which case FSA will modify or terminate the AFT through a subsequent notice prior to January 1, 2024. The following FSA county service centers are identified as initial pilot locations:

State	County service center
Alabama	Elmore
Alabama	Tuscaloosa
Alaska	Palmer
Arizona	Pinal
Arkansas	Boone
Arkansas	Lincoln
Arkansas	Sevier
Arkansas	Sharp
Arkansas	Cross
California	Fresno
California	San Joaquin
California	Santa Barbara
California	Siskiyou
California	Monterey
Colorado	Alamosa
Connecticut	Norwich
Delaware	Sussex
Florida	Holmes
Florida	Miami-Dade
Georgia	Coffee
Georgia	Dodge
Georgia	Terrell
Hawaii	American Samoa
Hawaii	Honolulu
Idaho	Minidoka
Idaho	Nezperce
Illinois	Champaign
Illinois	Jersey
Illinois	Johnson
Illinois	Livingston
Illinois	Macoupin
Indiana	Grant
Indiana	Jasper
Indiana	Parke
Iowa	Buchanan
Iowa	Cerro Gordo
Iowa	Guthrie
Iowa	Hardin
Iowa	Ida
Iowa	Palo Alto
Iowa	Pocahontas
Iowa	Sioux
Iowa	Tama
Iowa	Van Buren
Kansas	Lyon
Kansas	Pratt
Kansas	Russell
Kansas	Sherman
Kansas	Stevens
Kansas	Sumner
Kentucky	Adair
Kentucky	Harrison
Kentucky	Logan
Kentucky	Montgomery
Kentucky	Warren
Louisiana	Acadia
Louisiana	Avoyelles
Louisiana	Jefferson Davis
Louisiana	St Landry
Maine	Kennebec
Maryland	Caroline
Michigan	Grand Traverse
Michigan	Huron
Michigan	Isabella
Michigan	Mecosta
Michigan	Ottawa
Michigan	Hillsdale
Minnesota	Blue Earth
Minnesota	Fillmore
Minnesota	Morrison
Minnesota	Olmsted
Minnesota	Roseau
Minnesota	West Ottertail
Mississippi	Forrest
Mississippi	Jones
Mississippi	Neshoba
Mississippi	Pike
Mississippi	Warren
Missouri	Carroll
Missouri	Dunklin
Missouri	Grundy
Missouri	Harrison
Missouri	Pettis
Missouri	Polk
Montana	Glacier
Montana	Yellowstone
Nebraska	Cedar
Nebraska	Cherry
Nebraska	Hall
Nebraska	Otoe
Nebraska	Platte
Nebraska	Scotts Bluff
Nebraska	Butler
Nevada	Fallon
New Jersey	Cumberland
New Mexico	Curry
New Mexico	Dona Ana
New York	Genesee
New York	Steuben
North Carolina	Craven
North Carolina	Wilkes
North Dakota	Bottineau
North Dakota	Cass
North Dakota	Emmons
North Dakota	Ramsey
North Dakota	Traill
North Dakota	Sioux
Ohio	Defiance
Ohio	Logan
Ohio	Preble
Ohio	Tuscarawas
Oklahoma	Choctaw
Oklahoma	Craig
Oklahoma	Harmon
Oklahoma	Johnston
Oklahoma	Leflore
Oklahoma	Nowata
Oregon	Baker
Oregon	Douglas
Oregon	Klamath
Oregon	Umatilla
Oregon	Wasco
Pennsylvania	Huntingdon
Pennsylvania	Mercer
Pennsylvania	Somerset
Pennsylvania	Tioga
Puerto Rico	Lares
Puerto Rico	Ponce
South Carolina	Florence
South Dakota	Brown
South Dakota	Brule
South Dakota	Charles Mix
South Dakota	Haakon
South Dakota	Potter
South Dakota	Tripp
Tennessee	Carroll
Tennessee	Dickson
Texas	Donley
Texas	Guadalupe
Texas	Haskell
Texas	Hidalgo
Texas	Hopkins
Texas	Ochiltree
Texas	Parmer
Texas	Pecos
Texas	Swisher
Utah	Emery
Utah	Millard
Utah	Sevier
Utah	Summit
Utah	Utah
Vermont	Addison
Virginia	Accomack
Virginia	Fredericksburg
Virginia	Pittsylvania
Washington	Grant
Washington	Okanogan
Washington	Spokane
West Virginia	White Hall
West Virginia	Grant
West Virginia	Harrison
West Virginia	Roane
Wisconsin	Clark
Wisconsin	Fond Du Lac
Wisconsin	Trempealeau
Wyoming	Park

Application Process

All direct OL and FO applicants will be considered for AFT, except for applicants requesting Youth Loans or loan servicing.

There is no need for customers to apply for AFT, as applicants in selected pilot locations will be evaluated for AFT using the traditional Farm Loan Programs application materials. Therefore, AFT will use the standard Farm Loan Programs application criteria described throughout 7 CFR parts 761 and 764.

Applications that satisfy the AFT standards do not ultimately depend on FSA validation of cash flow budgets to determine feasibility; however, each applicant is still required to complete a cash flow budget as a part of their business plan, regardless of whether or not the applicant satisfies the AFT standards. Creation of realistic cash flow budgets remains an important component of successful business

planning, but those applications meeting the AFT standards will undergo formal loan evaluation of repayment ability and farm operating plan viability through the alternative AFT process. Furthermore, only 25 percent of applications are anticipated to qualify for AFT, which means the majority of loan applications will still require thorough evaluation of cash flow budgets by FSA staff as part of the standard underwriting process.

AFT Evaluation

Upon receipt of a complete application, FSA staff will load application data into its underwriting platform. Once loaded, the AFT scoring tool developed in the underwriting platform will be used by loan staff to evaluate a consistent set of selected financial variables for each application. To avoid potential manipulation of financial data, the ranges and weights of each benchmarked variable are maintained solely by select FSA headquarters development staff. The variables evaluated are optimized to identify applications with a reduced probability of default based on the analysis of the historic Farm Loan Programs portfolio data. The variables assessed in AFT consist only of validated data from financial statements submitted by the applicant to FSA and an applicant's repayment history.

The scoring tool evaluates the selected financial variables against the pre-determined benchmark ranges and determines if the applicant meets the minimum scoring threshold to qualify for the AFT underwriting process. If the applicant meets the AFT standards, a modified feasibility evaluation will be conducted by FSA staff as described in the Feasibility Evaluation section. Alternatively, applicants who do not qualify for the AFT process will continue to have their application processed consistent with the traditional underwriting and feasibility evaluation processes that require cash flow budget validation.

It is emphasized that the inability to qualify for the AFT process will never result in a loan application being denied. Instead of a potential expedited AFT feasibility evaluation, the applications that do not meet the AFT scoring threshold will undergo the routine evaluation and underwriting process currently in effect. AFT is designed to complement existing underwriting methods and is being used to create an efficiency in direct loan processing for the entire portfolio.

Also, applicants who meet the AFT standards will not receive an automatic loan approval, as other criteria, including eligibility and security provisions, still need to be satisfied.

General Eligibility Evaluation

General eligibility requirements are unchanged for loans processed under AFT. FSA staff will still be required to evaluate the ability of an applicant to obtain credit at reasonable rates and terms from commercial credit sources. For those applications qualified to be processed under AFT, test for other credit eligibility will need to be based on factors other than projected cash flow budget data. This may include, but is not limited to, an analysis of area lender standards, an applicant's historic performance and current financial statements.

Feasibility Evaluation

Applicants who qualify for AFT will undergo a modified feasibility evaluation by FSA staff. FSA staff will assess the applicant's financial strengths and viability in the farm assessment based on the selected AFT financial variables. For AFT-qualifying applicants, FSA staff will not take additional steps to validate the income and expense projections as is typically completed per established regulation.

Security

AFT will not change existing security requirements for loans.

Loan Requirements, Amounts, Rates, Terms, Conditions, and Regulatory Waivers

The loan making requirements, amounts, terms, and conditions of the loans processed under AFT are the same as standard Farm Loan Programs loans with the following exceptions to existing processes and regulatory requirements which otherwise apply to loans authorized under subtitle A, B, and C of the CONACT:

(1) An AFT applicant must provide a farm operating plan that is accurate and verifiable, which will be evaluated by FSA to assess compliance with loan requirements and to determine loan terms. The regulations in 7 CFR 761.103(b)(6) and (7), 7 CFR 761.103(c)(2) and (4), and 7 CFR 761.104(c), (d), (e), (f) and (g), which provide guidance on income, expense, yield, and price planning to create accurate and verifiable cash flow budgets for farm operating plans, are waived only to the extent these regulations require FSA to verify the accuracy of a cash flow budget, because FSA will not verify the accuracy of cash flow budget projections for applicants participating in AFT due to sufficient assurances of plan feasibility from the AFT benchmarking financial review process;

(2) While the farm operating plan will be evaluated by FSA, its cash flow evaluation will not be the basis for feasibility determinations for applicants participating in AFT. The AFT evaluation itself reflects the applicant's ability to successfully repay the loan. The requirements in 7 CFR 764.401(a)(1)(i) and (b)(1) are waived to the extent the regulation requires FSA to validate the farm operating plan cash flow budget;

(3) All regular FOs under AFT will have a 40-year equally amortized repayment term while all Microloan FOs under AFT will have a 25-year term, and all Down Payment FOs will have a 20-year term, notwithstanding that FO repayment terms will not exceed the useful life of security. A reduced repayment term must be requested by the applicant in writing. A consistent repayment term is necessary because AFT does not require a validated cash flow operating plan, which would be necessary to determine the ability of the applicant to accommodate alternate repayment terms. The requirements in 7 CFR 764.154(b) and (b)(1) are waived to the extent the regulation requires FO loan repayment terms to be based on the applicant's ability to repay;

(4) All OLs under AFT other than annual OLs will have a 7-year equally amortized repayment term. OL repayment terms for purposes other than annual operating expenses will be equal to the useful life of security or 7 years, whichever is less. A reduced repayment term must be requested by the applicant in writing. A consistent repayment term is necessary because AFT does not require a validated cash flow operating plan, which would be necessary to determine the ability of the applicant to accommodate alternate repayment terms. The requirement in 7 CFR 764.254(b)(2) is waived to the extent the regulation provides for alternative OL repayment terms;

(5) Repayment installments will be equally amortized over the life of the loan and are not eligible for unequal installments including interest only or balloon payments. A consistent repayment term is necessary because AFT does not require a validated cash flow operating plan, which would be necessary to determine the ability of the applicant to accommodate alternate repayment terms;

(6) Approved AFT applications are not eligible to be considered for limited resource rates because AFT does not require a validated cash flow operating plan, which would be necessary to

determine the potential need for limited resource rates. Instead, the standard cost of money interest rate will be used for AFT applicants. The requirements in 7 CFR 764.154(a)(2) and 764.254(a)(2) are waived to the extent the regulations allow FSA to provide a limited resource interest rate to applicants who are unable to develop a feasible plan;

(7) FSA must ensure the maximum loan limits in 7 CFR 761.8 are not exceeded at the time of loan closing. However, 7 CFR 761.8(a) is waived to the extent the regulation requires an evaluation of a cash flow budget to make that assessment at closing;

(8) The OL amount for AFT loans for annual operating expense purposes are subject to existing maximum loan limits and will not exceed both:

a. 75 percent of the Gross Farm Income reported on the most recent available Tax Return; and

b. the total Gross Farm Income in the projected cash flow budget submitted by the applicant as part of the loan application.

The requirement in 7 CFR 764.107(b)(1), which establishes the security value of annual crop production as equal to the annual OL amount developed as part of the farm operating plan cash flow budget, is waived to the extent inconsistent with part A and B of this exception because AFT does not require a validated cash flow operating plan, which would be necessary to validate the value of annual crop production;

(9) An applicant who qualifies and has their loan approved through AFT will be granted a waiver of borrower training requirements as they have demonstrated sufficient management ability to qualify for the waiver as reflected by the financial strength of their operations that qualified those applicants for AFT. The requirements in 7 CFR 764.453(a) and (b) are waived to the extent the regulation sets other conditions for a borrower to receive a waiver of borrower training requirements; and

(10) To be consistent with existing regulations, FSA must complete a Year-end analysis when a borrower is being considered for a new loan. However, the requirement in 7 CFR 765.105(b) is waived to the extent the regulation requires an evaluation of a cash flow budget to complete that analysis.

All provisions of the CONACT applicable to the Farm Loan Programs apply to loans made under AFT. Unless waived or adjusted by this document, all regulatory requirements applicable to the Farm Loan Programs apply to loans made under AFT. All standard operating procedures applicable to the Farm Loan Programs that are not superseded by any provision of this document apply to loans made under AFT.

Approval Notification and Loan Closing

As the application process for customers remains the same regardless of whether or not they qualify for AFT, the first time an applicant will be officially notified that their application was processed using the AFT method will be at the time of loan approval. Specifically, a customer will be informed on Part C of form FSA–2313 ''Notification of Loan Approval and Borrower Responsibilities'' that their loan application was approved using the AFT process. The applicant will be required to acknowledge their application was approved using the AFT underwriting evaluation and concur that they wish to proceed with loan closing. The applicant will also be given the opportunity to not accept the loan approval conditions and request a meeting with FSA to discuss any concerns. If the applicant requests a traditional underwriting evaluation be completed, FSA will reevaluate the application and make an updated final disposition. If the loan application is approved using traditional underwriting evaluation, a new form FSA–2313 will be issued. If the application is not approved using traditional underwriting evaluation, FSA will issue a written denial letter with appeal rights.

Loan Servicing

Loan servicing requirements are unchanged for loans processed under AFT.

Contact Information

Questions on AFT may be directed to the Farm Loan Programs staff in the local FSA county office. The local FSA county office may be found at *http://www.farmers.gov/working-with-us/USDA-service-centers*.

Paperwork Reduction Act Requirements

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), there are no changes the information collection approved by OMB under control numbers 0560–0236 and 0560–0237.

Environmental Review

The environmental impacts have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321- 4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR part 799).

The purpose of AFT is to improve internal underwriting processes to expedite Farm Loan Programs application processing. The limited discretionary aspects of AFT do not have the potential to impact the human environment as they are administrative. Accordingly, these discretionary aspects are covered by the categorical exclusions in 7 CFR 799.31(b)(3)(i) that applies to Farm Loan Programs, provided no extraordinary circumstances are found to exist. As such, the implementation of AFT and the participation in AFT do not constitute major Federal actions that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this action and this document serves as documentation of the programmatic environmental compliance decision for this federal action.

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the Assistance Listing, to which this document applies is 10.406 Farm Operating Loans and 10.407 Farm Ownership Loans.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone). Additionally, program information may

be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov*.

USDA is an equal opportunity provider, employer, and lender.

Zach Ducheneaux,

Administrator, Farm Service Agency.

[FR Doc. 2023–16489 Filed 8–2–23; 8:45 am]

BILLING CODE 3411–E2–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Forest Plan Area Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Northwest Forest Plan Advisory Committee will hold a public meeting according to the details shown below. The Committee is authorized under the National Forest Management Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the Committee is to provide advice and pragmatic recommendations regarding potential regional scale land management planning approaches and solutions within the Northwest Forest Plan Area within the context of the 2012 planning rule.

DATES: An in-person meeting, that permits committee members to participate virtually if needed, will be held on September 6, 2023, 8 a.m.–4:30 p.m. Pacific Daylight Time (PDT), September 7, 2023, 8 a.m.–4:30 p.m. PDT, and September 8, 2023, 8 a.m.–12:30 p.m. PDT.

Written and Oral Comments: Anyone wishing to provide in-person oral comments must pre-register by 11:59 p.m. PDT on August 29, 2023. Written public comments will be accepted through 11:59 p.m. PDT on August 29, 2023. Comments submitted after this date will be provided to the Forest Service, but the Committee may not have adequate time to consider those comments prior to the meeting.

All committee meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting will be held in person, at the Edith Green-Wendell Wyatt Federal Building, located at 1220 Southwest 3rd Avenue, Portland, OR 97204. Committee information and meeting details can be found at the following website: *https://www.fs.usda.gov/detail/r6/landmanagement/planning/?cid=fseprd1076013* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to *sm.fs.nwfp_faca@usda.gov* or via mail (*i.e.,* postmarked) to John Dow, FACA Coordinator, 1220 Southwest 3rd Avenue, Room 1A, Portland, OR 97204. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. PDT, August 29, 2023, and speakers can only register for one speaking slot. Requests to pre-register for oral comments must be sent by email to *sm.fs.nwfp_faca@usda.gov* or via mail (*i.e.,* postmarked) to John Dow, FACA Coordinator, 1220 Southwest 3rd Avenue, Room 1A, Portland, OR 97204.

FOR FURTHER INFORMATION CONTACT: Liz Berger, Designated Federal Officer (DFO), by phone at 971–260–7808 or email at *Liz.Berger@usda.gov* or John Dow, FACA Coordinator, at 719–250–5311 or email at *John.Dow@usda.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Select Co-Chairs;
2. Initiate work as specified in the Committee Charter; and
3. Schedule the next meeting.

The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Written comments may be submitted to the Forest Service up to 14 days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. 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.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at (202) 720–2600 (voice and TTY) or USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: July 31, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–16562 Filed 8–2–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Livestock Slaughter Survey. Revision to burden hours may be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by October 2, 2023 to be assured of consideration.

ADDRESSES:

- *Email: omboffi cer@nass.usda.gov.* Include the docket number above in the subject line of the message.
- *Efax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707. Copies of this information collection and related instructions can be obtained without charge from Richard Hopper, NASS—OMB Clearance Officer, at (202) 720–2206 or at *omboffi cer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Livestock Slaughter Survey.

OMB Control Number: 0535–0005.

Expiration Date of Approval: December 31, 2023.

Type of Request: Intent to revise and extend a currently approved information collection for a period of three years.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition as well as economic statistics, farm numbers, land values, on-farm pesticide usage, pest crop management practices, as well as the Census of Agriculture. Livestock slaughter data are used to estimate U.S. red meat production and reconcile inventory estimates which provide producers and the rest of the industry with current and future information on market supplies. This data is also used in preparing production, disposition, and income statistics which facilitate more orderly production, marketing, and processing of livestock and livestock products. NASS compiles data from both Federally Inspected and Non-Federally Inspected Slaughter Plants.

Authority: These data will be collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–113) and Office of Management and Budget regulations at 5 CFR part 1320.

All NASS employees and NASS contractors must also fully comply with all provisions of the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2018, title III of Public Law 115–435, codified in 44 U.S.C. ch. 35. CIPSEA supports NASS's pledge of confidentiality to all respondents and facilitates the agency's efforts to reduce burden by supporting statistical activities of collaborative agencies through designation of NASS agents, subject to the limitations and penalties described in CIPSEA.

Estimate of Burden: The Livestock Slaughter Survey includes a weekly survey of approximately 946 Federally Inspected (FI) slaughter plants and a monthly survey of approximately 900 State Inspected (SI) slaughter plants. Slaughter data is compiled by the Federal and State inspectors, therefore NASS does not contact these operations. NASS collects data only from the smaller independent plants and combines this data with the FI and SI data to create a national report. The smaller, independent operations (approximately 1,200 operations) are contacted either monthly, quarterly, or annually. Public reporting burden for this collection of information is estimated to average 15 minutes per response for an estimated annual burden of 2,300 hours. (The USDA and State inspectors are not included in the calculation of total burden, since they are performing this task as a part of their job functions.)

Respondents: Farmers and custom/state inspected slaughter plants.

Estimated Number of Respondents: 1,225.

Estimated Total Annual Burden on Respondents: 2,300 hours.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) 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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, June 29, 2023.

Kevin L. Barnes,

Associate Administrator.

[FR Doc. 2023–16529 Filed 8–2–23; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Honey and Honey Bee surveys. Revision to burden hours may be needed due to changes in the size of the target population, sampling design, and/or questionnaire length. Burden for a second mailing is included.

DATES: Comments on this notice must be received by October 2, 2023 to be assured of consideration.

ADDRESSES:

- *Email: omboffi cer@nass.usda.gov.* Include the docket number above in the subject line of the message.
- *Efax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336

South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

• *Hand Delivery/Courier:* Hand deliver to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707. Copies of this information collection and related instructions can be obtained without charge from Richard Hopper, NASS—OMB Clearance Officer, at (202) 720–2206 or at *ombofficer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Honey and Honey Bee Surveys.

OMB Control Number: 0535–0153.

Expiration Date of Approval: December 31, 2023.

Type of Request: Intent to revise and extend a currently approved information collection for a period of three years.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to prepare and issue state and national estimates of crop and livestock production, livestock products, prices, and disposition; as well as economic statistics, environmental statistics related to agriculture, and also to conduct the Census of Agriculture.

In this request for renewal of the Honey and Honey Bee (0535–0153) Information Collection Request (ICR), NASS has added a 2nd mailing to both the Bee and Honey Inquiry and the Quarterly Colony Loss Survey. The requested change will increase burden by 478 hours from the previous approved amount.

As pollinators, honey bees are vital to the agricultural industry for producing food for the world's population. Additional data is needed to accurately describe the costs associated with pest/disease control, wintering fees, and replacement worker and queen bees. USDA and the Environmental Protection Agency (EPA), in consultation with other relevant Federal partners, are scaling up efforts to address the decline of honey bee health with a goal of ensuring the recovery of this critical subset of pollinators. NASS supports the Pollinator Research Action Plan, published May 19, 2015, which emphasizes the importance of coordinated action to identify the extent and causal factors in honey bee mortality.

Authority: These data will be collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–113) and Office of Management and Budget regulations at 5 CFR part 1320.

All NASS employees and NASS contractors must also fully comply with all provisions of the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2018, title III of Public Law 115–435, codified in 44 U.S.C. ch. 35. CIPSEA supports NASS's pledge of confidentiality to all respondents and facilitates the agency's efforts to reduce burden by supporting statistical activities of collaborative agencies through designation of NASS agents, subject to the limitations and penalties described in CIPSEA.

Estimate of Burden: Public reporting burden for this collection of information for operations with five or more colonies is estimated to average 20 minutes per response for the annual Bee and Honey survey and 15 minutes per respondent for the quarterly Colony Loss Survey. Publicity materials and instruction sheets will account for 5 minutes of additional burden per respondent. Respondents who refuse to complete a survey will be allotted 2 minutes of burden per attempt to collect the data.

Respondents: Farmers.

Estimated Number of Respondents: 12,225.

Estimated Total Annual Burden on Respondents: With an estimated response rate of approximately 80%, we estimate the total burden to be approximately 7,920 hours.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) 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 those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, June 29, 2023.

Kevin L. Barnes,

Associate Administrator.

[FR Doc. 2023–16530 Filed 8–2–23; 8:45 am]

BILLING CODE 3410–20–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Colorado Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Notice of public meetings.

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 Colorado Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold monthly business meetings on the following Wednesdays: August 16, September 20, October 18, November 15, and December 20, 2023; at 3:00 p.m. Mountain Time. The purpose of the meeting is to continue working on its project on public school attendance zones in Colorado.

DATES: Wednesdays: 8/16, 9/20, 10/18, 11/15, and 12/20/2023; 3:00 p.m. MT.

ADDRESSES: The meeting will be held via Zoom.

Meeting Link (Audio/Visual): https://tinyurl.com/279fjudv; password: USCCR–CO.

Join by Phone (Audio Only): 1–833 435 1820; Meeting ID: 160 614 2807#.

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez, Designated Federal Official at *bdelaviez@usccr.gov.*

SUPPLEMENTARY INFORMATION: These committee meetings are available to the public through the meeting link above. Any interested member of the public may listen to the meetings. At each 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 meetings will include a list of persons who are present at the meetings. 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. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive

or learning impairments. To request additional accommodations, please email *ebohor@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meetings. Written comments may be emailed to Barbara Delaviez at *bdelaviez@usccr.gov*. Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–312–353–8311.

Records generated from these meetings may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meetings. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Colorado 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 *ebohor@usccr.gov.*

Agenda

I. Welcome and Roll Call
II. Draft, review, and prepare report on the Public School Attendance Zones project
III. Discuss Next Steps
IV. Public Comment
V. Adjournment

Dated: July 28, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–16519 Filed 8–2–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Minnesota Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Minnesota Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 12:30 p.m. CT on Thursday, August 24, 2023. The purpose of this meeting is to discuss the Committee's project proposal on housing affordability in the state.

DATES: Thursday, August 24, 2023, from 12:30 p.m.–1:30 p.m. Central Time

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1612943387

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 161 294 3387

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer, at *dbarreras@usccr.gov* or (202) 656–8937.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration 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. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at *lschiller@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Barreras at *dbarreras@usccr.gov*. Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Minnesota 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 *lschiller@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Discussion: Housing Affordability in Minnesota
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: July 28, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–16523 Filed 8–2–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Utah Advisory Committee; Correction

AGENCY: Commission on Civil Rights.

ACTION: Notice; correction to meeting date and time.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** on Wednesday, July 12, 2023, concerning a meeting of the Utah Advisory Committee. The meeting date and time has since changed.

FOR FURTHER INFORMATION CONTACT: Liliana Schiller, (312) 353–8311, *lschiller@usccr.gov.*

CORRECTION: In the **Federal Register** on Wednesday, July 12, 2023, in FR Document Number 2023–14783, on page 44259, second column, correct the meeting date and time to: Friday, August 25, 2023, from 3:00 p.m.–4:30 p.m. MT.

Dated: July 28, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–16517 Filed 8–2–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Survey of Housing Starts, Sales, and Completions

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's

reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed extension of the Survey of Housing Starts, Sales, and Completions, prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before October 2, 2023.

ADDRESSES: Interested persons are invited to submit written comments by email to *Thomas.J.Smith@census.gov.* Please reference Survey of Housing Starts, Sales, and Completions in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2023–0005, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed William Abriatis, U.S. Census Bureau, Economic Indicators Division, (301) 763–3686, or *william.m.abriatis@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans to request a three-year extension of the current Office of Management and Budget (OMB) clearance of the Survey of Housing Starts, Sales and Completions, also known as the Survey of Construction (SOC). The SOC collects monthly data on new residential construction from a sample of owners or builders. The Census Bureau uses the Computer-Assisted Personal Interviewing (CAPI) electronic questionnaires SOC–QI/SF.1 and SOC–QI/MF.1 to collect data on start and completion dates of construction, physical characteristics of the structure (floor area, number of bathrooms, type of heating system, etc), and if applicable, date of sale, sales price, and type of financing. The SOC provides widely used measures of construction activity, including the economic indicators Housing Starts and Housing Completions, which are from the New Residential Construction series, and New Residential Sales. The current clearance for this survey is scheduled to expire on March 31, 2024.

We sample approximately 1,780 new buildings each month (approximately 21,363 per year). We inquire about the progress of each building multiple times until it is completed (and a sales contract is signed, if it is a single-family house that is built for sale). For single-family buildings, we conduct an average of 8.2 interviews and for multifamily buildings, we conduct an average of 6.4 interviews. The total number of interviews conducted from 2020 through 2022 was averaged and for single-family buildings is approximately 112,471 annually and for multifamily buildings is about 48,941 annually. Each interview takes 5 minutes on average. Therefore, the total annual burden is 13,451 hours.

II. Method of Collection

The Census Bureau uses its field representatives to collect the data. The field representatives conduct interviews to obtain data.

III. Data

OMB Control Number: 0607–0110.

Form Number(s): SOC–QI.SF.1 and SOC–QI/MF.1.

Type of Review: Regular submission. Request for an Extension without Change of a Currently Approved Collection.

Affected Public: Individuals or households; Business or other for-profit organizations.

Estimated Number of Respondents: 21,363.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 13,451.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. 131 and 182.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–16584 Filed 8–2–23; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–130]

Certain Walk-Behind Lawn Mowers and Parts Thereof From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Rescission of Review, in Part; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain walk-behind lawn mowers and parts thereof (lawn mowers) from the People's Republic of China (China) during the period or review (POR), October 30, 2020, through December 31, 2021. Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 3, 2023.

FOR FURTHER INFORMATION CONTACT: Natasia Harrison or Harrison Tanchuck,

AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1240 or (202) 482–7421, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 13, 2021, Commerce published the *Order* in the **Federal Register**.[1] On September 6, 2022, Commerce published in the **Federal Register** the notice of initiation of an administrative review of the *Order* for the period October 30, 2020, through December 31, 2021.[2] On August 1, 2022, we received timely requests for an administrative review from exporters and/or producers: Zhejiang Amerisun Technology Co., Ltd (Zhejiang Amerisun), Zhejiang Dobest Power Tools Co., Ltd. (Zhejiang Dobest), Ningbo Daye Garden Machinery Co., Ltd. (Ningbo Daye), Daye North America, Inc., and Ningbo Lingyue Intelligent Equipment Co. Ltd. (Ningbo Lingyue).[3] As explained below, on October 1, 2022, Zhejiang Amerisun and Zhejiang Dobest timely withdrew their requests for an administrative review of themselves.[4] On October 18, 2022, Commerce selected Ningbo Daye as the mandatory respondent in this administrative review.[5] On March 2, 2023, Commerce extended the deadline for these preliminary results until July 28, 2023.[6]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[7] A list of the topics included in the Preliminary Decision Memorandum is included as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The products covered by the *Order* are lawn mowers from China. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. On October 1, 2022, Zhejiang Amerisun and Zhejiang Dobest timely withdrew their requests for an administrative review of themselves.[8] No other party requested a review of these companies. Therefore, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this administrative review of the *Order* with respect to these two companies. For additional information regarding this determination, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily find that there is a subsidy, *i.e.,* a financial contribution that gives rise to a benefit to the recipient and that the subsidy is specific.[9]

In reaching these preliminary results, Commerce relied on facts otherwise available, with the application of adverse inferences, pursuant to section 776 of the Act. For further information, *see* ''Use of Facts Otherwise Available and Application of Adverse Inferences'' in the accompanying Preliminary Decision Memorandum.

Preliminary Results of Review

We preliminarily determine the following net countervailable subsidy rates for the period October 30, 2020, through December 31, 2021:

Producer/exporter	Subsidy rate in 2020 (percent *ad valorem*)	Subsidy rate in 2021 (percent *ad valorem*)
Ningbo Daye Garden Machinery Co., Ltd.[10]	10.58	9.46

Assessment Rates

In accordance with 19 CFR 351.221(b)(4)(i), we preliminarily assigned subsidy rates in the amounts above for the producer/exporters shown above. Consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), upon issuance of the final results, Commerce will determine, and the U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue these instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

[1] *See Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination,* 86 FR 36702 (July 13, 2021) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 54463, 54474 (September 6, 2022).

[3] *See* Ningbo Daye's Letter, ''Request for Administrative Review,'' dated August 1, 2023; *see also* Zhejiang Amerisun and Zhejiang Dobest's Letter, ''Request for Administrative Review,'' dated August 1, 2022.

[4] *See* Zhejiang Amerisun's Letter, ''Withdrawal of Request for Administrative Review,'' dated October 1, 2022 (Zhejiang Amerisun's Withdrawal of Review Request); *see also* Zhejiang Dobest's Letter, ''Withdrawal of Request for Administrative Review,'' dated October 1, 2022 (Zhejiang Dobest's Withdrawal of Review Request).

[5] *See* Memorandum, ''Mandatory Respondent Identification,'' dated October 18, 2022.

[6] *See* Memorandum ''Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review,'' dated March 2, 2023.

[7] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review, Rescission of Review in Part, 2020–2021: Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[8] *See* Zhejiang Amerisun's Withdrawal of Review Request and Zhejiang Dobest's Withdrawal of Review Request.

[9] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[10] This rate applies to Ningbo Daye and its cross-owned companies: Zhejiang Jindaye Holdings Limited and Ningbo Lingyue.

For the companies for which we have rescinded this administrative review, we will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawn from warehouse, for consumption, during the period October 30, 2020, through December 31, 2021, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions directly to CBP no earlier than 35 days after the date of publication of this notice in the **Federal Register**.

Cash Deposit Requirements

In accordance with section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts indicated for the producers/exporters listed above for 2021, the second year covered by the period of review, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the publication of these preliminary results of review in the **Federal Register**.[11] Rebuttal comments, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline for filing case briefs.[12] Parties who submit case or rebuttal briefs in this administrative review are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[13] Case and rebuttal briefs must be filed using ACCESS.[14] An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Easter Time on the established deadline. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[15]

Pursuant to 19 CFR 351.310(c), parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must do so within 30 days after the publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance using ACCESS. Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues addressed at the hearing will be limited to those raised in briefs. If a request for a hearing is made, Commerce will inform parties of the scheduled date for the hearing.[16]

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, we intend to issue the final results of this administrative review, including the results of our analysis of the issues raised by interested parties in their case briefs, within 120 days after the issuance of these preliminary results of this administrative review.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4) and 351.221(b)(4).

Dated: July 28, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2023–16580 Filed 8–2–23; 8:45 am]

BILLING CODE 3510–DS–P

[11] *See* 19 CFR 351.309(c).

[12] *See* 19 CFR 351.309(d).

[13] *See* 19 CFR 351.309(c)(2) and 351.309(d)(2).

[14] *See* 19 CFR 351.303.

[15] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[16] *See* 19 CFR 351.310.

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) has received requests to conduct administrative reviews of various antidumping duty (AD) and countervailing duty (CVD) orders with June anniversary dates. In accordance with Commerce's regulations, we are initiating those administrative reviews.

DATES: Applicable August 3, 2023.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Commerce has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various AD and CVD orders with June anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

With respect to antidumping administrative reviews, if a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *https://access.trade.gov,* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on Commerce's service list.

Respondent Selection

In the event Commerce limits the number of respondents for individual

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments within five days after the deadline for the initial comments.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act, the following guidelines regarding collapsing of companies for purposes of respondent selection will apply. In general, Commerce has found that determinations concerning whether particular companies should be ''collapsed'' (*e.g.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this AD proceeding (*e.g.,* investigation, administrative review, new shipper review, or changed circumstances review). For any company subject to this review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection.

Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (Q&V) Questionnaire for purposes of respondent selection, in general, each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where Commerce considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of a particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[2] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial responses to section D of the questionnaire.

Separate Rates

In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, Commerce analyzes each entity exporting the subject merchandise. In accordance with the separate rates criteria, Commerce assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a Separate Rate Application or Certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, Commerce requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on Commerce's website at *https://access.trade.gov/Resources/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment

[2] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

of the proceeding [3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[4] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on Commerce's website at *https://access.trade.gov/Resources/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

Exporters and producers must file a timely Separate Rate Application or Certification if they want to be considered for individual examination. Furthermore, exporters and producers who submit a Separate Rate Application or Certification and subsequently are selected as mandatory respondents will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following AD and CVD orders and findings. We intend to issue the final results of these reviews not later than June 30, 2024.

	Period to be reviewed
AD Proceedings	
ARGENTINA: Raw Honey, A–357–823	11/23/21–5/31/23
Algodonera Avellaneda S.A.	
Apicola Danangie.	
Asociación de Cooperativas Argentinas C.L.	
Argentik LLC.	
Azul Agronegocios S.A.	
Camino de Circunvalancion y Calle.	
Compaia Apicola Argentina S.A.	
Compania Inversora Platense S.A.	
Cooperativa Apicola La Colmena Ltda.	
D'Ambros Maria de Los Angeles y D'Ambros Maria Daniela SRL.	
Gasrroni S.R.L.	
Geomiel S.A.	
Gruas San Blas S.A.	
Honey & Grains Srl.	
Industrial Haedo S.A.	
Industrias Haedo S.A.	
Mieles Cor Pam Srl.	
Naiman S.A.	
Newsan S.A.	
Nexco S.A.	
Patagonik Food S.A., Patagonik S.A., Azul Argronegocios S.A.	
Promiel Srl (Vicentin S.A.I.C.).	
Terremare Foods S.A.S.	
Villamora S.A.	
BRAZIL: Raw Honey, A–351–857	11/23/21–5/31/23
Apidouro Comercial Exportadora E Importadora Ltda.	
Apiários Adams Agroindustrial Comercial Exportadora Ltda.	
Apis Nativa Agroindustrial Exportadora Ltda.	
Breyer & Cia. Ltda.	
Carnauba Do Brasil Ltda.	
Central De Cooperativas Apicolas Do (CASA APIS).	
Cooperativa Mista Dos Apicultores D.	
Flora Nectar.	
Lambertucci.	
Minamel.	
Nectar Floral.	
Novomel.	
S & A Honey Ltda.	
Safe Logistics.	
Samel Honey.	
STM Trading.	
Wenzel's Apicultura.	
Melbras Importadora E Exportadora Agroindustrial Ltda.	
Apiário Diamante Comercial Exportadora Ltda/Apiário Diamante Produção e Comercial de Mel Ltda (Supermel).	

[3] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, etc.) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[4] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Central de Cooperativas Apícolas do Semiárido Brasileiro—CASA APIS.	
Floranectar Ind. Comp. Imp. E Exp. De Mel.	
Minamel Agroindústria Ltda.	
Annamell Imp. E Exp. De Produtos Apicoloas Ltda.	
Conexão Agro Ltda ME.	
Wenzel's Apicultura Comercio Industria Importacao E Exportacao Ltda.	
GERMANY: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A–428–845	6/1/22–5/31/23
BENTELER Steel/Tube GmbH.	
Benteler Distribution International GmbH.	
Mubea Fahrwerksfedern GmbH.	
Salzgitter AG, Salzgitter Mannesmann Line Pipe GmbH, Salzgitter Mannesmann Precision Tubes GmbH.	
India: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A–533–873	6/1/22–5/31/23
Goodluck India Limited.	
Salem Steel N.A., LLC.	
Tube Product of India, Ltd., a unit of Tube Investments of India Limited.	
INDIA: Glycine, A–533–883	6/1/22–5/31/23
Aditya Chemicals.	
Adwith Nutrichem Private Limited.	
Alchemos Private Limited.	
Alka Chemical Industries.	
Alkanb Chemicals.	
Avid Organics Private Limited.	
Bajaj Healthcare Limited.	
Eagle Chemical Works.	
Global Merchants.	
Indiana Chem-Port.	
J.R. International.	
Jain Specialty Fine Chemicals.	
JR Corporation.	
Kaaha Overseas.	
Kronox Lab Sciences Ltd.	
Kumar Industries.	
Ladleadd.	
Lucas-Tvs Limited.	
Medbion Healthcare Private Limited.	
Medilane Healthcare Pvt. Ltd.	
Meteoric Biopharmaceuticals.	
Natural and Essential Oils Private Limited.	
Pan Chem Corporation.	
Papchem Lifesciences (Opc) Private Limited.	
Paras Intermediates Private Limited.	
Reliance Rasayan Pvt. Ltd.	
Rexisize Rasayan Industries.	
Shari Pharmachem Pvt., Ltd.	
Tarkesh Trading Company.	
Venus International.	
INDIA: Quartz Surface Products, A–533–889	6/1/22–5/31/23
3HQ Surfaces Pvt. Ltd.	
Advantis Quartz LLP.	
Amazoone Ceramics Ltd.	
Antique Granito Shareholders Trust.	
Antique Marbonite Pvt Ltd/Prism Johnson Limited/Shivam Enterprises.	
Argil Ceramics.	
ARO Granite Industries Ltd.	
ASI Industries Limited.	
Asian Granito India Ltd.	
Baba Super Minerals Pvt Ltd.	
Camrola Quartz Limited.	
Chaitanya International Minerals LLP.	
Classic Marble Co Pvt Ltd.	
Colors of Rainbow.	
Cuarzo.	
Divine Surfaces Private Limited.	
Divya Shakti Granites Ltd.	
Divya Shakti Ltd.	
EELQ Stone LLP.	
Esprit Stones Pvt Ltd.	
Evetis Stone Pvt Ltd.	
Geetanjali Quartz Pvt Ltd.	
Global Stones Pvt. Ltd.	
Global Surfaces Ltd.	
Glowstone Industries Pvt Ltd.	
GS Exim.	

	Period to be reviewed
Haique Stones Inc.	
Hi Elite Quartz LLP.	
Imperiaal Granimarmo Pvt Ltd.	
INANI Marble and Industries Ltd.	
Indus Trade and Technology LLC.	
Internaational Stones India Pvt. Ltd.	
Jyothi Quartz Surfaces.	
Keros Stone LLP.	
Krishna Sai Exports.	
Mahi Granites Pvt Ltd.	
Malbros Marbles and Granites Industries.	
Marudhar Quartz Surface Private Limited.	
Marudhar Rocks International Private Limited.	
Modern Surface Inc.	
Mountmine Impex Pvt Ltd.	
MQ surfaces Pvt Ltd.	
Nice Quartz and Stones Pvt Ltd.	
Pacific Industries Ltd.	
Pacific Quartz Surfaces LLP.	
Paradigm Granite Pvt Ltd.	
Paradigm Stone India Pvt Ltd.	
Pelican Buildmat Pvt Ltd.	
Pelican Grani Marmo Pvt. Ltd.	
Pelican Quartz Stone.	
PM Quartz Surfaces Pvt Ltd.	
Pokarna Engineered Stone Limited.	
Pristine Quartz Pvt. Ltd.	
QuartzKraft LLP.	
Renshou Industries.	
RMC Readymix Porselano India Limited.	
Rocks Forever.	
Rudra Quartz LLP.	
Safayar Ceramics Pvt Ltd.	
Satya Exports.	
Shanmukha Exports.	
Shivam Surface India LLP.	
Southern Rocks and Minerals Pvt Ltd.	
Square Ft. Marble and granite.	
Stone Empire Pvt. Ltd.	
Sunex Stones Pvt Ltd.	
SVG Exports Pvt Ltd.	
Taanj Quartz Inc.	
Tab India Granites Pvt. Ltd.	
Tab Quartz.	
Trident Surface.	
Universal Marketing Agencies Private Limited.	
Universal Quartz & Natural Stones Pvt Ltd.	
Universall Granites.	
Venkata Sri Balaji Quartz Surfaces.	
INDIA: Raw Honey, A–533–903	11/23/21–5/31/23
AA Food Factory.	
Allied Natural Product.	
Alpro.	
Ambrosia Natural Products *(India) Private Limited*/Ambrosia Enterprise/Sunlite India Agro Producer Co., Ltd.	
Aone Enterprises.	
Apis India Limited.	
Apl Logistics.	
Bee Hive Farms.	
Brij Honey Pvt., Ltd.	
Dabur India Limited.	
Ess Pee Quality Products.	
Ganpati Natural Products.	
GMC Natural Product.	
Hi Tech Natural Products India Ltd.	
Indocan Honey Pvt., Ltd.	
Infinator Pvt., Ltd.	
Kejriwal Bee Care India Private Limited.	
KK Natural Food Industries LLP.	
Natural Agro Foods.	
NYSA Agro Foods.	
Pearlcot Enterprises.	
Queenbee Foods Pvt. Ltd.	
Salt Range Foods Pvt. Ltd.	

	Period to be reviewed
Shakti Api Foods Private Limited.	
Shakti Apifoods Pvt Ltd.	
Shan Organics.	
Shiv Apiaries.	
Sunlite Organic.	
UTMT.	
Vedic Systems.	
Yieppie Internationals.	
ITALY: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A–475–838	6/1/22–5/31/23
Dalmine S.p.A.	
JAPAN: Glycine, A–588–878	6/1/22–5/31/23
Nagase & Co., Ltd.	
Showa Denko K.K.	
Yuki Gosei Kogyo Co., Ltd.	
MALAYSIA: Prestressed Concrete Steel Wire Strand, A–557–819	6/1/22–5/31/23
Kiswire Sdn. Bhd.	
Southern PC Steel Sdn. Bhd.	
Southern Steel Sdn. Bhd.	
Wei Dat Steel Wire Sdn. Bhd.	
SOCIALIST REPUBLIC OF VIETNAM: Raw Honey [5], A–552–833	8/25/21–5/31/23
Ban Me Thuot Honeybee JSC.	
Bao Nguyen Honeybee Co., Ltd.	
Bee Honey Corporation of Ho Chi Minh City.	
Daisy Honey Bee Joint Stock Company.	
Dak Nguyen Hong Exploitation of Honey Company Limited TA.	
Daklak Honey Bee JSC.	
Daklak Honeybee Joint Stock Company.	
Dong Nai Honey Bee Corp.	
Dongnai HoneyBee Corporation.	
Golden Bee Company Limited.	
Golden Honey Co., Ltd.	
Hai Phong Honeybee Company Limited.	
Hanoi Honey Bee Joint Stock Company.	
Highlands Honeybee Travel Co., Ltd.	
Hoa Viet Honeybee One Member Company Limited.	
Hoa Viet Honeybee Co., Ltd.	
Hoang Tri Honey Bee Co., Ltd.	
Hung Binh Phat.	
Hung Thinh Trading Pvt.	
Huong Rung Co., Ltd.	
Huong Rung Trading-Investment and Export Company Limited.	
Huong Viet Honey Co., Ltd.	
Hung Thinh Trading Pvt.	
Nguyen Hong Honey Co., LTDTA.	
Nhieu Loc Company Limited.	
Phong Son Co., Ltd.	
Saigon Bees Co., Limited.	
Southern Honey Bee Company LTD.	
Thai Hoa Viet Mat Bees Raising Co.	
Thanh Hao Bees Co., Ltd.	
TNB Foods Co., Ltd.	
Viet Thanh Food Co., Ltd.	
Vinawax Producing Trading and Service Company Limited.	
SPAIN: Chlorinated Isocyanurates, A–469–814	6/1/22–5/31/23
Electroquímica de Hernani, S.A.	
Ercros, S.A.	
Industrias Químicas Tamar, S.L. Polígono.	
SPAIN: Finished Carbon Steel Flanges, A–469–815	6/1/22–5/31/23
Aleaciones De Metales Sinterizados S.A.	
Central Y Almacenes.	
Farina Group Spain.	
Friedrich Geldbach Gmbh.	
Grupo Cunado.	
Transglory S.A.	
Tubacero, S.L.	
ULMA Forja, S.Coop.	
SPAIN: Prestressed Concrete Steel Wire Strand, A–469–821	6/1/22–5/31/23
Global Special Steel Products S.A.U. (d.b.a. Trenzas y Cables de Acero PSC, S.L. (TYCSA)).	
SWITZERLAND: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A–441–801	6/1/22–5/31/23
Benteler Rothrist AG.	
Mubea PräzisionsstahIrohr AG/Mubea Inc.	
THE PEOPLE'S REPUBLIC OF CHINA: Chlorinated Isocyanurates, A–570–898	6/1/22–5/31/23
Heze Huayi Chemical Co., Ltd.	

	Period to be reviewed
Juancheng Kangtai Chemical Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Tapered Roller Bearings, A–570–601	6/1/22–5/31/23
C&U Group Shanghai Bearing Co., Ltd.	
Hangzhou C&U Automotive Bearing Co., Ltd.	
Hangzhou C&U Metallurgy Bearing Co., Ltd.	
Huangshi C&U Bearing Co., Ltd.	
Shanghai Tainai Bearing Co., Ltd.	
Sichuan C&U Bearing Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Aluminum Foil [6]	4/1/22–3/31/23
Manakin Industries, LLC.	
TURKEY: Quartz Surface Products, A–489–837	6/1/22–5/31/23
AKG Yalitim ve Insaat Malzemeleri Sanayi ve Ticaret A.S.	
Belenco Dis Ticaret A.S (aka Belenco dis Tikaret A.S.)/Peker Yuzey Tasarmlar.	
Sanayi ve Ticaret A.S.	
UKRAINE: Prestressed Concrete Steel Wire Strand, A–823–817	6/1/22–5/31/23
PJSC Stalkanat.	
CVD Proceedings Period to be Reviewed	
INDIA: Glycine, C–533–884	1/1/22–12/31/22
Aditya Chemicals.	
Adwith Nutrichem Private Limited.	
Alchemos Private Limited.	
Alka Chemical Industries.	
Alkanb Chemicals.	
Avid Organics Private Limited.	
Bajaj Healthcare Limited.	
Eagle Chemical Works.	
Global Merchants.	
Indiana Chem-Port Pan Chem Corporation.	
J.R. International.	
Jain Specialty Fine Chemicals.	
Jr Corporation.	
Kaaha Overseas.	
Kronox Lab Sciences Ltd.	
Kumar Industries, India.[7]	
Ladleadd.	
Lucas-Tvs Limited.	
Medbion Healthcare Private Limited.	
Medilane Healthcare Pvt. Ltd.	
Meteoric Biopharmaceuticals.	
Natural And Essential Oils Private Limited.	
Papchem Lifesciences (Opc) Private Limited.	
Paras Intermediates Private Limited.	
Reliance Rasayan Pvt. Ltd.	
Rexisize Rasayan Industries.	
Rudraa International.	
Shari Pharmachem Pvt., Ltd.	
Tarkesh Trading Company.	
Venus International.	
INDIA: Quartz Surface Products, C–533–890	1/1/22–12/31/12
Advantis Quartz LLP.	
Antique Marbonite Pvt. Ltd/Antique Granito Shareholders Trust/Shivam.	
Enterprises/Prism Johnson Limited.	
Argil Ceramics.	
ARO Granite Industries Limited.	
ASI Industries Limited.	
Baba Super Minerals Pvt Ltd.	
Camrola Quartz Limited.	
Classic Marble Company Pvt Ltd.	
Cuarzo.	
Divine Surfaces Private Limited.	
EELQ Stone LLP.	
Esprit Stones Pvt. Ltd.	
Evetis Stone India Pvt. LTD.	
Geetanjali Quartz Inc.	
Global Surfaces Ltd.	
Global Stones Pvt. Ltd.	
Glowstone Industries Pvt Ltd.	
GS Exim.	
Haique Stones Inc.	
Imperiaal Granimarmo Pvt Ltd.	
Jyothi Quartz Surfaces.	

	Period to be reviewed
Keros Stone LLP.	
Mahi Granites Private Limited.	
Marudhar Rocks International Pvt Ltd.	
Marudhar Quartz Surfaces Private Limited.	
Modern Surface Inc.	
Pacific Industries Limited.	
Pacific Quartz Surfaces LLP.	
Paradigm Stone India Pvt Ltd.	
Pokarna Engineered Stone Limited.	
Renshou Industries.	
Rocks Forever.	
Rudra Quartz LLP.	
Safayar Ceramics Pvt Ltd.	
Satya Exports.	
Shanmukha Exports.	
Southern Rocks & Minerals.	
Stone Empire Pvt. Ltd.	
Sunex Stones Private Limited.	
Taanj Quartz Inc.	
Trident Surface.	
Venkata Sri Balaji Quartz Surfaces.	
TURKEY: Quartz Surface Products, C–489–838	1/1/22–12/31/22
AKG Yalitim ve Insaat Malzemeleri Sanayi ve Ticaret A.S.	
Belenco Dis Ticaret A.S. (aka Belenco dis Tikaret A. S.)/Peker Yuzey Tasarimlari. Sanayi ve Ticaret A.S.	
Ermaş Madencilik Turizm Sanayi Ve Ticaret A.Ş.	
Suspension Agreements	
None.	

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an AD order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), Commerce, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether AD duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant ''gap'' period of the order (*i.e.,* the period following the expiry of provisional measures and before definitive measures were put into place), if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

Commerce's regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of

[5] In the notice of opportunity to request administrative review for June anniversary orders that published on June 1, 2023 (88 FR 35835), Commerce inadvertently listed an incorrect period of review. The correct period of review is listed above.

[6] In a prior Initiation notice regarding Antidumping Duty Orders with April anniversary dates, Commerce inadvertently omitted a company name for which it received a timely request for review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 38021 (June 12, 2023) (*April Anniversary Initiation Notice*); *see also* Letter from Amcor to Commerce, ''Administrative Review of the Antidumping Duty Order on Certain Aluminum Foil from the People's Republic of China: Request for Administrative Review'' dated May 1, 2023. Accordingly, we are hereby correcting the *April Anniversary Initiation Notice* to include ''Manakin Industries, LLC'' as a respondent in the administrative review of the antidumping duty order on Certain Aluminum Foil from the People's Republic of China (A–570–053) for the POR: 4/1/22–3/31/23.''

[7] GEO Specialty Chemicals, Inc. (GEO), a domestic producer of glycine, requested a review for ''Kumar Industries.'' We confirmed that GEO intended to request a review for ''Kumar Industries, India.'' *See* Memorandum, ''Phone Conversation with an Interested Party,'' dated July 20, 2023.

factual information being submitted. Please review the *Final Rule,*[8] available at *www.govinfo.gov/content/pkg/FR-2013-07-17/pdf/2013-17045.pdf,* prior to submitting factual information in this segment. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[9]

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information using the formats provided at the end of the *Final Rule.*[10] Commerce intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by Commerce.[11] In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) Q&V questionnaires. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This policy also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which Commerce will grant untimely-filed requests for the extension of time limits. Please review the *Final Rule,* available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: July 28, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–16534 Filed 8–2–23; 8:45 am]

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[8] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[9] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[10] *See* section 782(b) of the Act; *see also Final Rule;* and the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[11] *See* 19 CFR 351.302.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–148]

Gas Powered Pressure Washers From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less-Than-Fair-Value, Preliminary Affirmative Critical Circumstances Determination, in Part, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that gas powered pressure washers (pressure washers) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2022, through September 30, 2022. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable August 3, 2023.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla and Dusten Hom, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3477, and (202) 482–5075, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on January 25, 2023.[1] On May 18, 2023, Commerce postponed the preliminary determination of this investigation to July 28, 2023.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are pressure washers from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] We received comments from several parties concerning the scope of the antidumping duty (AD) and countervailing duty (CVD) investigations of pressure washers as it appeared in the *Initiation Notice.*[6] On

[1] *See Gas Powered Pressure Washers from the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 4807 (January 25, 2023) (*Initiation Notice*).

[2] *See Gas Powered Pressure Washers from the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair Value Investigation,* 88 FR 31677 (May 18, 2023).

[3] *See* Memorandum, ''Decision Memorandum for Preliminary Determination of Sales in the Less-Than-Fair-Value Investigation of Gas Powered Pressure Washers from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR at 4812.

[6] *See* Preliminary Decision Memorandum at ''IV. Scope Comments.''

June 8, 2023, we issued the preliminary scope decision memorandum.[7] For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[8] As discussed in the Preliminary Scope Decision Memorandum, Commerce did not modify the scope language as it appeared in the *Initiation Notice*.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Because China is a non-market economy, within the meaning of section 771(18) of the Act, Commerce has calculated normal value in accordance with section 773(c) of the Act.

In addition, pursuant to sections 776(a) and (b) of the Act because the China-wide entity did not cooperate to the best of its ability in responding to Commerce's request for data, Commerce preliminarily has relied upon facts otherwise available, with adverse inferences, for the China-wide entity. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances, in Part

In accordance with section 733(e)(1) of the Act and 19 CFR 351.206(c), Commerce preliminarily determines that critical circumstances exist with respect to imports of pressure washers from China for Jiangsu Jianghuai Engine Co., Ltd. (JD Power) and the China-wide entity, but do not exist with respect to the non-selected companies receiving a separate rate. For a full description of the methodology and results of Commerce's analysis, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice,*[9] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Commerce's Policy Bulletin 05.1 describes this practice.[10]

Separate Rates

In addition to JD Power, we have preliminarily granted certain non-individually examined respondents a separate rate. Also, because Rato requested a separate rate but did not respond to Commerce's questionnaire as a mandatory respondent in this investigation, we have preliminarily denied a separate rate to Rato and are treating it as part of the China-wide entity.[11] *See* the Preliminary Decision Memorandum for details.

In calculating the rate for non-individually examined separate rate respondents in a non-market economy AD investigation, Commerce normally looks to section 735(c)(5)(A) of the Act, which pertains to the calculation of the all-others rate in a market economy AD investigation, for guidance. Pursuant to section 735(c)(5)(A) of the Act, normally this rate shall be an amount equal to the weighted average of the estimated AD rate established for those companies individually examined, excluding zero and *de minimis* and any rates based entirely under section 776 of the Act. Commerce calculated an individual estimated weighted-average dumping margin for JD Power that is not zero, *de minimis,* or based entirely on facts otherwise available. Thus, the weighted-average dumping margin calculated for JD Power is the basis to determine the weighted-average dumping margin for the non-examined, separate rate companies, using section 735(c)(5)(A) of the Act for guidance, which provides for the determination of the estimated weighted-average dumping for all other producers and exporters in a market economy investigation. *See* the below table in the ''Preliminary Determination of the Investigation'' section of this notice.

Preliminary Determination of the Investigation

Commerce preliminarily determines that the following weighted-average dumping margins exist:

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for export subsidy offset(s)) (percent)
Jiangsu Jianghuai Engine Co., Ltd	Jiangsu Jianghuai Engine Co., Ltd	263.25	252.71
Sumec Hardware and Tools Co., Ltd	Sumec Hardware and Tools Co., Ltd	263.25	252.71
Zhejiang Danau Machine Co., Ltd	Zhejiang Danau Machine Co., Ltd	263.25	252.71
China-Wide Entity	274.37	263.83	

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of subject merchandise, as described in the scope of the investigation section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted average amount by which normal value exceeds U.S. price, as indicated in the chart above, as follows: (1) for the producer/exporter combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of Chinese producers/exporters of subject merchandise that have not established eligibility for their own separate rates, the cash deposit rate

[7] *See* Memorandum, ''Preliminary Scope Decision Memorandum,'' dated June 8, 2023.

[8] *Id.*

[9] *See Initiation Notice,* 88 FR at 4811.

[10] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

[11] *See* Rato's Letter, ''Notice of Intent Not to Participate,'' dated April 17, 2023 (Rato Declination Letter).

will be equal to the estimated weighted-average dumping margin established for the China-wide entity; and (3) for all third-county exporters of subject merchandise not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the Chinese producer/exporter combination (or China-wide entity) that supplied that third-country exporter.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise from JD Power and from the China-wide entity. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to all unliquidated entries of merchandise from JD Power and the China-wide entity that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice in the **Federal Register**.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion CVD proceeding when CVD provisional measures are in effect. Accordingly, where Commerce has made a preliminary affirmative determination for domestic subsidy pass-through or export subsidies, Commerce offset the calculated estimated weighted-average dumping margin by the appropriate rate(s). Any such adjusted rates may be found in the Preliminary Determination section's chart of estimated weighted-average dumping margins above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting cash deposits at a rate equal to the estimated weighted-average dumping margins calculated in this preliminary determination unadjusted for the passed-through domestic subsidies or for export subsidies at the time the CVD provisional measures expire. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[12] Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[13] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm the date and time of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. Pursuant to 19 CFR 351.210(e)(2), Commerce requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On July 10, 2023, pursuant to 19 CFR 351.210(e), JD Power timely requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months, if the preliminary determination was affirmative.[14] On July 10, 2023, the petitioner timely requested that Commerce fully extend the deadline for the final determination in the event of a negative preliminary determination.[15] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act. Furthermore, as the final CVD determination has been aligned with the final AD determination, Commerce will make its final CVD determination no later than 135 days after the date of publication of this preliminary determination.[16]

[12] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[13] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[14] *See* JD Power's Letter, ''Request to Postpone Final Determination,'' dated July 10, 2023.

[15] *See* Petitioner's Letter, ''Request to Postpone Final Determination,'' dated July 10, 2023.

[16] *See Gas Powered Pressure Washers from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Duty Determination,* 88 FR 36531 (June 5, 2023).

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: July 28, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation is cold water gas powered pressure washers (also commonly known as power washers), which are machines that clean surfaces using water pressure that are powered by an internal combustion engine, air-cooled with a power take-off shaft, in combination with a positive displacement pump. This combination of components (*i.e.,* the internal combustion engine, the power take-off shaft, and the positive displacement pump) is defined as the ''power unit.'' The scope of the investigation covers cold water gas powered pressure washers, whether finished or unfinished, whether assembled or unassembled, and whether or not containing any additional parts or accessories to assist in the function of the ''power unit,'' including, but not limited to, spray guns, hoses, lances, and nozzles. The scope of the investigation covers cold water gas powered pressure washers, whether or not assembled or packaged with a frame, cart, or trolley, with or without wheels attached.

For purposes of this investigation, an unfinished and/or unassembled cold water gas powered pressure washer consists of, at a minimum, the power unit or components of the power unit, packaged or imported together. Importation of the power unit whether or not accompanied by, or attached to, additional components including, but not limited to a frame, spray guns, hoses, lances, and nozzles constitutes an unfinished cold water gas powered pressure washer for purposes of this scope. The inclusion in a third country of any components other than the power unit does not remove the cold water gas powered pressure washer from the scope. A cold water gas powered pressure washer is within the scope of this investigation regardless of the origin of its engine. Subject merchandise also includes finished and unfinished cold water gas powered pressure washers that are further processed in a third country or in the United States, including, but not limited to, assembly or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the in-scope cold water gas powered pressure washers.

The scope excludes hot water gas powered pressure washers, which are pressure washers that include a heating element used to heat the water sprayed from the machine.

Also specifically excluded from the scope of this investigation is merchandise covered by the scope of the antidumping and countervailing duty orders on certain vertical shaft engines between 99cc and up to 225cc, and parts thereof from the People's Republic of China. *See Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof from the People's Republic of China: Antidumping and Countervailing Duty Orders,* 86 FR 023675 (May 4, 2021).

The cold water gas powered pressure washers subject to this investigation are classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 8424.30.9000 and 8424.90.9040. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2023–16594 Filed 8–2–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–867]

Large Power Transformers From the Republic of Korea: Rescission of Antidumping Duty Administrative Review; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on large power transformers (LPTs) from the Republic of Korea (Korea), covering the period of review (POR) August 1, 2021, through July 31, 2022.

DATES: Applicable August 3, 2023.

FOR FURTHER INFORMATION CONTACT: John Drury, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0195.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 2022, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on LPTs from Korea, covering the POR.[1] On August 29, 2022, respondent Hyosung Heavy Industries Corporation (Hyosung) timely requested that Commerce conduct an administrative review of itself,[2] and on August 31, 2022, Hitachi Energy USA, Inc. (the petitioner) timely requested that Commerce conduct an administrative review of several exporters and/or producers.[3] On October 11, 2022, Commerce published in the **Federal Register** a notice of initiation of an administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).[4]

On October 26, 2022, Commerce released U.S. Customs and Border Protection (CBP) import data, with respect to LPTs from Korea subject to the antidumping duty order, during the POR, and solicited comments from parties.[5] As a result of the query to CBP, Commerce found no suspended entries of LPTs from Korea during the POR.[6]

On November 1, 2022, Iljin Electric Co., Ltd. (Iljin) submitted a letter to Commerce certifying that Iljin had no exports, sales, or entries to the United States during the POR of subject LPTs.[7] On November 2, 2022, Hyosung Heavy Industries Corporation (Hyosung) submitted a letter to Commerce certifying that Hyosung had no exports, sales, or entries of subject LPTs into the United States during the POR, as well as withdrawing Hyosung's request for

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List,* 87 FR 47187 (August 2, 2022).

[2] *See* Hyosung's Letter, ''Hyosung's Request for Administrative Review,'' dated August 29, 2022.

[3] *See* Petitioner's Letter, ''Request for 2021/2022 Administrative Review,'' dated August 31, 2022.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 61278 (October 11, 2022) (*Initiation Notice*).

[5] *See* Memorandum, ''Release of U.S. Customs and Border Protection Import Data,'' dated October 26, 2022 (CBP Data Memorandum).

[6] *Id.*

[7] *See* Iljin's Letter, ''No Shipments Letter,'' dated November 1, 2022.

administrative review.[8] On November 3, 2022, LS Electric Co., Ltd (LS Electric) submitted a letter to Commerce certifying that LS Electric had no exports, sales, or entries of subject LPTs into the United States during the POR.[9] On November 4, 2022, Hyundai Electric & Energy Systems Co., Ltd. (Hyundai) submitted a letter to Commerce certifying that Hyundai had no exports, sales, or entries of subject LPTs into the United States during the POR.[10] Commerce issued a no-shipment inquiry to CBP, and received a response from CBP stating that there were no suspended entries during the POR from any of the companies on which we initiated the administrative review.[11]

On November 9, 2022, the petitioner submitted comments and new factual information in response to the CBP Data Memorandum, stating that information on the record indicated that there may have been sales and/or entries of subject LPTs into the United States during the POR manufactured and/or sold by Hyosung and Hyundai.[12] On January 3, 2023, the petitioners submitted additional new factual information which, according to the petitioners, showed that Hyosung had sales of subject LPTs in the United States during the POR.[13] On January 20, 2023, Hyosung submitted comments and new factual information to rebut, clarify, or correct the factual information submitted by the petitioners.[14]

On April 26, 2023, Commerce issued a memorandum stating its intent to rescind the administrative review of the antidumping duty order on LPTs from Korea for all companies on which we initiated the review.[15] Commerce stated that, based on the examination of record evidence, information on the record did not undermine the results of the CBP data query or the certified statements by parties that there were no sales, shipments, or entries of subject LPTs to the United States during the POR.[16]

Scope of the Order

The scope of this order covers large liquid dielectric power transformers having a top power handling capacity greater than or equal to 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete.

Incomplete LPTs are subassemblies consisting of the active part and any other parts attached to, imported with or invoiced with the active parts of LPTs. The ''active part'' of the transformer consists of one or more of the following when attached to or otherwise assembled with one another: the steel core or shell, the windings, electrical insulation between the windings, the mechanical frame for an LPT.

The product definition encompasses all such LPTs regardless of name designation, including but not limited to step-up transformers, step-down transformers, autotransformers, interconnection transformers, voltage regulator transformers, rectifier transformers, and power rectifier transformers.

The LPTs subject to this order are currently classifiable under subheadings 8504.23.0040, 8504.23.0080, and 8504.90.9540 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Analysis of Comments Received

Commerce provided parties with an opportunity to comment on its intent to rescind the administrative review.[17] We received comments from Hyundai, stating that Commerce should, pursuant to 19 CFR 351.213(d)(3), rescind the administrative review with respect to all of the companies on which Commerce initiated the review as there were no suspended entries of subject LPTs.[18] No other parties submitted comments. We agree with Hyundai and find that there is no information on the record to contradict the findings of our CBP queries.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), it is Commerce's practice to rescind an administrative review of an antidumping duty order where it concludes there were no suspended entries of subject merchandise during the POR for an exporter or producer. Normally, upon completion of an administrative review, the suspended entries are liquidated at the antidumping duty assessment rate(s) based on the final results for the review period. Therefore, for an administrative review to be conducted, there must be a suspended entry that Commerce can instruct CBP to liquidate at the calculated antidumping duty assessment rate for the review period. As explained above, there were no suspended entries of subject merchandise from the companies on which Commerce initiated the administrative review during the POR. Accordingly, in the absence of suspended entries of subject merchandise during the POR, we are rescinding this administrative review in accordance with 19 CFR 351.213(d)(3).

Cash Deposit Requirements

As Commerce is rescinding this administrative review, cash deposit rates will not change. Accordingly, the current cash deposit requirements shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: July 28, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–16593 Filed 8–2–23; 8:45 am]

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[8] *See* Hyosung's Letter, ''Notification of No Shipments and Withdrawal of Review Request,'' dated November 2, 2022.

[9] *See* LS Electric's Letter, ''No Shipment Letter,'' dated November 3, 2022. LS Electric also stated that it was formerly known as LSIS Co., Ltd. Commerce initiated the administrative review with respect to entries from LSIS Co., Ltd. *See Initiation Notice.* Commerce previously determined that LS Electric Co., Ltd. is the successor-in-interest to LSIS Co., Ltd. *See Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Final Successor-in-Interest Determination; 2018–2019,* 86 FR 30915 (June 10, 2021).

[10] *See* Hyundai's Letter, ''No Shipments Letter,'' dated November 4, 2022.

[11] *See* Memorandum, ''No Shipment Inquiry for Multiple Companies During the period 08/01/2021 through 07/31/2022,'' dated January 9, 2023.

[12] *See* Petitioner's Letter, ''Comments in Response to the Department's Release of Entry Data from U.S. Customs and Border Protection,'' dated November 9, 2022. In the letter, the ''petitioners'' were identified as Hitachi Energy USA Inc. and Prolec-GE Waukesha, Inc (hereinafter referred to as petitioners).

[13] *See* Petitioners' Letter, ''Submission of New Factual Information,'' dated January 3, 2023.

[14] *See* Hyosung's Letter, ''Hyosung's Rebuttal Factual Information,'' dated January 20, 2023.

[15] *See* Memorandum, ''Intent to Rescind Review,'' dated February 17, 2023 (Intent to Rescind Review).

[16] *Id.*

[17] *Id.*

[18] *See* Hyundai's Letter, ''Comments on the Department's Intent to Rescind the Administrative Review,'' dated May 3, 2023.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–112]

Certain Collated Steel Staples From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that Tianjin Hweschun Fasteners Manufacturing Co., Ltd. (Tianjin Hweschun) did not make sales of subject merchandise at less than normal value (NV), and that four companies had no shipments of subject merchandise during the period of review (POR) July 1, 2021, through June 30, 2022. We invite interested parties to comment on these preliminary results.

DATES: Applicable August 3, 2023.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Max Goldman, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–0224, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting an administrative review of the antidumping duty order on certain collated steel staples from the People's Republic of China (China).[1] In addition to the mandatory respondent, Tianjin Hweschun,[2] this review also covers Zhejiang Best Nail Industrial Co., Ltd. (Best Nail)/Shaoxing Bohui Import & Export Co., Ltd. (Best Nail/Shaoxing Bohui),[3] China Staple (Tianjin) Co., Ltd. (China Staple), Shanghai Yueda Nails Co., Ltd. (Shanghai Yueda), Shijiazhuang Shuangming Trade Co., Ltd. (Shijiazhuang Shuangming), Tianjin Jinyifeng Hardware Co., Ltd. (Tianjin Jinyifeng), and Unicorn Fasteners Co., Ltd. (Unicorn Fasteners).[4]

For events that occurred since the publication of the *Initiation Notice* and the analysis behind our preliminary results herein, *see* the Preliminary Decision Memorandum.[5] A list of topics discussed in the Preliminary Decision Memorandum is included in the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx*.

Scope of the Order[6]

The products covered by the *Order* are certain collated steel staples from China. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Preliminary Determination of No Shipments

Based on an analysis of information from U.S. Customs and Border Protection (CBP), the no-shipment certifications, and other record information, we preliminarily determine that Best Nail/Shaoxing Bohui, Tianjin Jinyifeng, and Unicorn Fasteners had no shipments of subject merchandise during the POR. Consistent with our practice in non-market economy (NME) cases, we are not rescinding this review with respect to these companies but, rather, we intend to complete the review and issue appropriate instructions to CBP based on the final results of the review.[7]

Separate Rates

We preliminarily determine that Tianjin Hweschun is eligible for a separate rate in this administrative review.[8] Because China First, Shanghai Yueda, and Shijiazhuang Shuangming did not submit either a separate rate application or a separate rate certification, they are not eligible for a separate rate.

The China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[9] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity, the entity is not under review, and the entity's rate (*i.e.,* 112.01 percent)[10] is not subject to change. *See* the Preliminary Decision Memorandum for further discussion.

Aside from Best Nail/Shaoxing Bohui, Tianjin Jinyifeng, and Unicorn Fasteners, for which we preliminarily find made no shipments of subject merchandise during the POR, Commerce considers all other companies for which a review was requested and which did not demonstrate separate rate eligibility, to be part of the China-wide entity.[11] For the preliminary results of this review, we consider three companies to be part of the China-wide entity: China First; Shanghai Yueda; and Shijiazhuang Shuangming.

Methodology

We are conducting this administrative review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213. Commerce has calculated constructed export price in accordance with section 772(b) of the Act. Because China is an NME within the meaning of section 771(18) of the Act, we calculated NV in accordance with section 773(c) of the Act.

Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margin exists for the period July 1, 2021, through June 30, 2022:

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 54463 (September 6, 2022) (*Initiation Notice*).

[2] *See* Memorandum, ''Respondent Selection,'' dated October 21, 2022.

[3] *See Certain Collated Steel Staples from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2020–2021,* 87 FR 48153 (August 8, 2022).

[4] *See Initiation Notice.*

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Certain Collated Steel Staples from the People's Republic of China; 2021–2022,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See Certain Collated Steel Staples from the People's Republic of China: Antidumping Duty Order,* 85 FR 43815 (July 20, 2020) (*Order*).

[7] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011) (*NME AD Assessment*); *see also* the ''Assessment Rates'' section, *infra.*

[8] *See* Preliminary Decision Memorandum at the ''Separate Rate Determinations'' section for more details.

[9] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[10] *See Order,* 85 FR at 43816.

[11] *See Initiation Notice* (''All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below.'').

Exporter	Weighted-average dumping margin (percent)
Tianjin Hweschun Fasteners Manufacturing Co., Ltd	0.00

Disclosure and Public Comment

We intend to disclose to interested parties the calculations performed for these preliminary results in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[12] Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[13] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this review are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Executive summaries should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days after the date of publication of this notice.[14] Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.[15] Parties should confirm by telephone the date and time of the hearing two days before the scheduled date.

All briefs and hearing requests must be filed electronically using ACCESS [16] and must be served on interested parties.[17] An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[18]

Unless the deadline is otherwise extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of the issues raised by the parties in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Assessment Rates

Upon issuance of the final results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review, in accordance with 19 CFR 351.212(b). If Tianjin Hweschun's *ad valorem* weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, Commerce will calculate importer-specific assessment rates for that respondent, in accordance with 19 CFR 351.212(b)(1).[19] Pursuant to 19 CFR 351.212(b)(1), where the respondent reported the entered value of its U.S. sales, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of those sales. Where the respondent did not report entered value, we will calculate importer-specific per-unit duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total quantity of those sales. To determine whether an importer-specific, per-unit assessment rate is *de minimis,* in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values.

If, in the final results, Tianjin Hweschun's weighted-average dumping margin continues to be zero or *de minimis* (*i.e.,* less than 0.5 percent), Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[20] For entries that were not reported in the U.S. sales database submitted by Tianjin Hweschun during this review, and for the three companies that do not qualify for a separate rate, Commerce will instruct CBP to liquidate such entries at the China-wide rate (*i.e.,* 112.01 percent).[21] In addition, if we continue to find no shipments of subject merchandise for Best Nail, Shaoxing Bohui, Tianjin Jinyifeng, and/or Unicorn Fasteners in the final results, any suspended entries of subject merchandise associated with these companies will be liquidated at the China-wide rate.[22]

Commerce intends to issue appropriate assessment instructions to CBP 35 days after the publication of the final results in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for Tianjin Hweschun, the cash deposit rate will be that rate established in the final results of this review (except, if the rate is *de minimis,* then a cash deposit rate of zero will be required); (2) for previously investigated or reviewed Chinese and non-Chinese exporters for which a review was not requested and that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.,* 112.01 percent); and (4) for all non-Chinese exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

[12] *See* 19 CFR 351.309(c).

[13] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (March 26, 2020) (''To provide adequate time for release of case briefs via ACCESS, {Enforcement and Compliance} intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications remain in effect.'')).

[14] *See* 19 CFR 351.310(c).

[15] *See* 19 CFR 351.310(d).

[16] *See* 19 CFR 351.303.

[17] *See* 19 CFR 351.303(f).

[18] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[19] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[20] *See* 19 CFR 351.106(c)(2).

[21] The China-wide rate determined in the investigation was 122.55 percent. *See Order,* 85 FR at 43816. This rate was adjusted for export subsidies to determine the cash deposit rate (112.01 percent) collected for companies in the China-wide entity.

[22] *See NME AD Assessment.*

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or increase in the amount of antidumping duties by the amount of the countervailing duties.

Notification to Interested Parties

We are issuing and publishing the preliminary results of this review in accordance with sections 751(a)(l) and 777(i)(l) of the Act, and 19 CFR 351.221(b)(4).

Dated: July 28, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2023–16566 Filed 8–2–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–985]

Xanthan Gum From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, Partial Rescission of the Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that the exporters subject to this antidumping duty (AD) administrative review made sales of subject merchandise at less than normal value, and that two companies (Beijing Rodia Auto Sport Ltd. and Zamp Inc. dba Z Sports) had no shipments of subject merchandise during the period of review (POR) July 1, 2021, through June 30, 2022. In addition, we are rescinding this review with respect to Shandong Hiking International Commerce Group Co., Ltd. (Shandong Hiking). Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 3, 2023.

FOR FURTHER INFORMATION CONTACT: Reginald Anadio, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3166.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2022, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the AD order on xanthan gum from the People's Republic of China (China).[1] Commerce published the *Initiation Notice* of this administrative review on September 6, 2022.[2] For details regarding the events that occurred subsequent to the initiation of the review, *see* the Preliminary Decision Memorandum.[3] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.* A list of topics discussed in the Preliminary Decision Memorandum is included in the appendix to this notice.

On March 3, 2023, Commerce extended the deadline for these preliminary results to July 28, 2023.[4]

Scope of the Order

The product covered by the *Order* includes dry xanthan gum, whether or not coated or blended with other products. Xanthan gum is included in this *Order* regardless of physical form, including, but not limited to, solutions, slurries, dry powders of any particle size, or unground fiber. Merchandise covered by the scope of the *Order* is classified in the Harmonized Tariff Schedule of the United States at subheading 3913.90.20. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope is dispositive.

A full description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.

Preliminary Determination of No Shipments

On September 22, 2022, Beijing Rodia Auto Sport Ltd. (Beijing Rodia) and Zamp Inc. dba Z Sports (Z Sports), on September 23, 2022, Shanghai Smart Chemicals Co. Ltd. (Shanghai Smart), and on October 6, 2022, Deosen Biochemical Ltd. and Deosen USA, Inc. (Deosen Biochemical), respectively, filed timely certifications that they had no exports, shipments, sales, or entries of subject merchandise to the United States during the POR.[5] Based on information obtained from U.S. Customs and Border Protection (CBP) and on Beijing Rodia's, Z Sports', and Shanghai Smart's no shipment certifications, Commerce preliminarily determines that Beijing Rodia, Z Sports, and Shanghai Smart had no shipments of subject merchandise during the POR.[6]

However, Commerce preliminarily determines that Deosen Biochemical had reviewable transactions during the POR.[7] For additional information

[1] *See Xanthan Gum from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 78 FR 43143 (July 19, 2013) (*Order*); and *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry List,* 87 FR 39461 (July 1, 2022).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 54463 (September 6, 2022) (*Initiation Notice*).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Ninth Antidumping Duty Administrative Review of Xanthan Gum from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated March 3, 2023.

[5] *See* Beijing Rodia's Letter, ''Beijing Rodia Auto Sport Ltd. Notice of No Sales,'' dated September 22, 2022; Z Sports' Letter, ''Zamp Inc. dba Z Sports Notice of No Sales,'' dated September 22, 2022; Shanghai Smart's Letter, ''No Shipment Certification,'' dated September 23, 2022; and Deosen Biochemical's Letter, ''No Shipment Certifications of Deosen Biochemical Ltd. and Deosen USA, Inc.,'' dated October 6, 2022.

[6] *See* Memorandum, ''Xanthan Gum from the People's Republic of China (A–570–985, A–122–985),'' dated April 4, 2023 (Zamp Inc. dba Z Sports); *see also* Memorandum, ''Xanthan Gum from the People's Republic of China (A–570–985, A–122–985),'' dated April 4, 2023 (Beijing Rodia Auto Sport Ltd.) and Memorandum, ''No Shipment Inquiry for Shanghai Smart Chemicals Co. Ltd. during the period 07/01/2021 through 06/30/2022,'' dated June 7, 2023.

[7] *Id.; see also Xanthan Gum from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments; 2017–2018,* 84 FR 26813 (June 10, 2019), and accompanying Preliminary Decision Memorandum

regarding this determination, *see* the Preliminary Decision Memorandum.

Consistent with Commerce's practice in non-market economy (NME) cases, we are not rescinding this administrative review with respect to Beijing Rodia, Z Sports, and Shanghai Smart, but intend to complete the review and issue appropriate instructions to CBP based on the final results of the review.[8]

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if all parties that requested a review withdraw their requests within 90 days of the publication date of the notice of initiation of the requested review in the **Federal Register**. On September 22, 2022, Gum Products International, Inc. (Gum Products) timely withdrew its request for administrative review of Shandong Hiking International Commerce Group Co., Ltd. (Shandong Hiking).[9] Because no other party requested a review of Shandong Hiking, consistent with 19 CFR 351.213(d)(1), Commerce is rescinding this review, in part, with respect to Shandong Hiking.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). We calculated export price and constructed export price in accordance with section 772 of the Act. Because China is an NME country within the meaning of section 771(18) of the Act, we calculated normal value in accordance with section 773(c) of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum.

Separate Rates

Commerce preliminarily determines that three non-individually examined companies are eligible for separate rates in this administrative review.[10] The Act and Commerce's regulations do not address the establishment of a separate rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for separate-rate respondents which Commerce did not examine individually in an administrative review. Section 735(c)(5)(A) of the Act states that the all-others rate should be calculated by averaging the weighted-average dumping margins calculated for individually-examined respondents, excluding dumping margins that are zero, *de minimis,* or based entirely on facts available. For the preliminary results of this review, Commerce determined the estimated dumping margins for Fufeng and Meihua to be 2.91 percent and 36.92 percent, respectively. As explained in the Preliminary Decision Memorandum, we are preliminarily assigning a rate of 4.76 percent to the three non-examined respondents: Jianlong Biotechnology Co., Ltd. (formerly, Inner Mongolia Jianlong Biochemical Co., Ltd); Deosen Biochemical (Ordos) Ltd./Deosen Biochemical Ltd.; and CP Kelco (Shandong) Biological Company Limited, which qualify for a separate rate in this review, consistent with Commerce's practice and section 735(c)(5)(A) of the Act.

China-Wide Entity

Under Commerce's policy regarding the conditional review of the China-wide entity,[11] the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in this review, the entity is not under review, and the entity's rate (*i.e.,* 154.07 percent) is not subject to change.[12]

Aside from Beijing Rodia, Z Sports, and Shanghai Smart, for which we preliminarily find no shipments, and Shandong Hiking, for which this review is being rescinded, Commerce considers all other companies for which a review was requested and did not demonstrate separate rate eligibility to be part of the China-wide entity.[13] For these preliminary results, we consider A.H.A. International Co., Ltd., East Chemsources Ltd., Foodchem Biotech Co., Ltd., Greenhealth International Co., Ltd. (Hong Kong), Guangzhou Zio Chemical Co., Ltd., Hangzhou Yuanjia Chemical Co., Ltd., Hebei Xinhe Biochemical Co., Ltd., H&H International Forwarders Co., Nanotech Solutions SDN BHD, Powertrans Freight Systems, Inc., Qingdao Yalai Chemical Co., Ltd., Shanghai Tianjia Biochemical Co., Ltd., Shanxi Reliance Chemicals Co., Ltd., The TNN Development Ltd., The TNN Development USA Inc., Unionchem Corp. Ltd., Wanping Bio Chem Co., Ltd., and Weifang Hongyuan Chemical Co., Ltd. to be part of the China-wide entity because they did not file separate rate applications or certifications. For additional information, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margins exist for the POR July 1, 2021, through June 30, 2022:

Exporter	Weighted-average dumping margin (percent)
Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.)/Shandong Fufeng Fermentation Co., Ltd./Xinjiang Fufeng Biotechnologies Co., Ltd	2.91
Meihua Group International Trading (Hong Kong) Limited/Langfang Meihua Biotechnology Co., Ltd./Xinjiang Meihua Amino Acid Co., Ltd	36.92

(PDM) at 6 (citing Memorandum, ''Deosen Biochemical Ltd. and Deosen Biochemical (Ordos) Ltd. Affiliation and Single Entity Status,'' dated June 4, 2019, unchanged in *Xanthan Gum from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017–2018,* 84 FR 64831 (November 25, 2019)).

[8] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011); and the ''Assessment Rates'' section, *infra.*

[9] *See* Gum Products' Letter, ''Xanthan Gum from the People's Republic of China, A–570–985: Withdrawal of Request for Administrative Review,'' dated September 22, 2022.

[10] *See* Preliminary Decision Memorandum at the ''Separate Rate Determination'' section for more details.

[11] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[12] *See Order,* 78 FR at 43144.

[13] *See Initiation Notice,* 87 FR at 54464 (''All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below.'').

Exporter	Weighted-average dumping margin (percent)
Jianlong Biotechnology Co., Ltd. (formerly, Inner Mongolia Jianlong Biochemical Co., Ltd)	4.76
Deosen Biochemical (Ordos) Ltd./Deosen Biochemical Ltd	4.76
CP Kelco (Shandong) Biological Company Limited	4.76

Disclosure and Public Comment

Commerce intends to disclose to parties to the proceeding the calculations performed for these preliminary results of review within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication.[14] Rebuttal briefs, limited to issues raised in the case briefs, may be filed with Commerce no later than seven days after the date for filing case briefs.[15] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[16] Executive summaries should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**. Requests for a hearing should contain: (1) the requesting party's name, address, and telephone number; (2) the number of individuals associated with the requesting party that will attend the hearing and whether any of those individuals is a foreign national; and (3) a list of the issues the party intends to discuss at the hearing. If a request for a hearing is made, Commerce will announce the date and time of the hearing. Parties should confirm by telephone the date and time of the hearing two days before the scheduled hearing date.

All submissions, with limited exceptions, must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time (ET) on the due date.[17] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.[18] Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of review, Commerce will determine, and CBP shall assess, ADs on all appropriate entries covered by this review.[19] Commerce intends to issue appropriate assessment instructions to CBP 35 days after the publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

We will calculate importer/customer-specific assessment rates equal to the ratio of the total amount of dumping calculated for examined sales to a particular importer/customer to the total entered value of those sales, in accordance with 19 CFR 351.212(b)(1).[20] Where the respondent reported reliable entered values, Commerce intends to calculate importer/customer-specific *ad valorem* assessment rates by dividing the total amount of dumping calculated for all reviewed U.S. sales to the importer/customer by the total entered value of the merchandise sold to the importer/customer.[21] Where the respondent did not report entered values, Commerce will calculate importer/customer-specific assessment rates by dividing the total amount of dumping calculated for all reviewed U.S. sales to the importer/customer by the total quantity of those sales. Commerce will calculate an estimated *ad valorem* importer/customer-specific assessment rate to determine whether the per-unit assessment rate is *de minimis;* however, Commerce will use the per-unit assessment rate where entered values were not reported.[22] Where an importer/customer-specific *ad valorem* assessment rate is not zero or *de minimis,* Commerce will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's *ad valorem* weighted-average dumping margin is zero or *de minimis,* or an importer/customer-specific *ad valorem* assessment rate is zero or *de minimis,*[23] Commerce will instruct CBP to liquidate the appropriate entries without regard to ADs.

For respondents not individually examined in this administrative review that qualified for a separate rate, the assessment rate will be equal to the weighted-average dumping margin assigned to the respondent in the final results of this review.[24]

Pursuant to Commerce's refinement to its practice, for sales that were not reported in the U.S. sales database submitted by a respondent individually examined during this review, Commerce will instruct CBP to liquidate the entry of such merchandise at the dumping margin assigned to the China-wide entity.[25] Additionally, where Commerce determines that an exporter under review had no shipments of subject merchandise to the United States during the POR, any suspended entries of subject merchandise that entered under that exporter's CBP case number during the POR will be liquidated at the

[14] *See* 19 CFR 351.309(c)(1)(ii).

[15] *See* 19 CFR 351.309(d).

[16] *See* 19 CFR 351.309(c)(2) and (d)(2).

[17] *See* 19 CFR 351.303 (for general filing requirements).

[18] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[19] *See* 19 CFR 351.212(b)(1).

[20] We applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[21] *See* 19 CFR 351.212(b)(1).

[22] *Id.*

[23] *See* 19 CFR 351.106(c)(2).

[24] *See Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments: 2014–2015,* 81 FR 29528 (May 12, 2016), and accompanying PDM, at 10–11, unchanged in *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2014–2015,* 81 FR 54042 (August 15, 2016).

[25] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

dumping margin assigned to the China-wide entity.

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of ADs on entries of merchandise covered by the final results of this review and for future deposits of estimated ADs, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of xanthan gum from China entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the final results of this administrative review in the **Federal Register**, as provided for by section 751(a)(2)(C) of the Act: (1) for companies granted a separate rate in the final results of this review, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review for the company (except, if the rate is zero or *de minimis,* then a cash deposit rate of zero will be required); (2) for previously investigated or reviewed China and non-China exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all China exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity, which is 154.07 percent; and (4) for all non-China exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to China exporter(s) that supplied that non-China exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double ADs.

Notification to Interested Parties

Commerce is issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4) and 351.221(b)(4).

Dated: July 28, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2023–16582 Filed 8–2–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–815]

Oil Country Tubular Goods From Ukraine: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that sales of oil country tubular goods (OCTG) from Ukraine were made at less than normal value during the period of review (POR) July 1, 2021, through June 30, 2022. We invite interested parties to comment on these preliminary results.

DATES: Applicable August 3, 2023.

FOR FURTHER INFORMATION CONTACT: Toni Page, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1398.

SUPPLEMENTARY INFORMATION:

Background

On July 16, 2019, Commerce published in the **Federal Register** the antidumping duty order on OCTG from Ukraine.[1] On July 1, 2022, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order* on OCTG from Ukraine for the POR July 1, 2021, through June 30, 2022.[2] On September 6, 2022, based on timely requests for review,[3] Commerce initiated an administrative review of the *Order*.[4] The domestic interested parties are: Maverick Tube Corporation; Tenaris Bay City, Inc.; IPSCO Tubulars Inc.; and United States Steel Corporation. This review covers the sole mandatory respondent, Interpipe.[5] On March 23, 2023, we extended the deadline for the preliminary results of this review by117 days in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213(h)(2).[6]

For details regarding the events that occurred subsequent to the initiation of the review, *see* the Preliminary Decision Memorandum.[7] A list of topics discussed in the Preliminary Decision Memorandum is included in the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://*

[1] *See Termination of the Suspension Agreement on Certain Oil Country Tubular Goods from Ukraine, Rescission of Administrative Review, and Issuance of Antidumping Duty Order,* 84 FR 33918 (July 16, 2019) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 87 FR 39461 (July 1, 2022).

[3] *See* Domestic Interested Parties' Letter, ''Request for Administrative Review,'' dated August 1, 2022; United States Steel Corporation's Letter, ''Request for Administrative Review,'' dated August 1, 2022; and Interpipe's Letter, ''Request for Review—2021–2022 AD Review Period,'' dated July 29, 2022.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 54463 (September 6, 2022).

[5] In the most recent administrative review of this proceeding, we treated the following companies as a single entity: Interpipe Europe S.A.; Interpipe Ukraine LLC; PJSC Interpipe Niznedneprovsky Tube Rolling Plant; LLC Interpipe Niko Tube (collectively, Interpipe), and these companies accounted for all entries of the subject merchandise during the POR, making Interpipe the sole mandatory respondent. *See Oil Country Tubular Goods from Ukraine: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 57176 (September 19, 2022), and accompanying Preliminary Decision Memorandum at ''Affiliation and Collapsing,'' unchanged in *Oil Country Tubular Goods from Ukraine: Final Results of Antidumping Duty Administrative Review; 2020–2021,* 88 FR 17521 (March 23, 2023), and accompanying Issues and Decision Memorandum; and Memorandum, ''Release of U.S. Customs and Border Protection Entry Data for Respondent Selection,'' dated September 15, 2022.

[6] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated March 23, 2023.

[7] *See* Memorandum, ''Decision Memorandum for Preliminary Results of the 2021–2022 Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from Ukraine,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

access.trade.gov. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The merchandise under review is certain OCTG from Ukraine, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the *Order* also covers OCTG coupling stock. For a full description of the scope, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. Constructed export price has been calculated in accordance with section 772 of the Act and normal value was calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

Commerce preliminarily determines that the following weighted-average dumping margin exists for the period July 1, 2021, through June 30, 2022:

Producer and/or exporter	Weighted-average dumping margin (percent)
Interpipe Europe S.A./Interpipe Ukraine LLC/PJSC Interpipe Niznedneprovsky Tube Rolling Plant/LLC Interpipe Niko Tube (collectively, Interpipe)	4.89

Disclosure and Public Comment

Commerce will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b). Case briefs, or other written comments, may be submitted to the Assistant Secretary for Enforcement and Compliance through ACCESS. Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[8] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing case briefs.[9] Parties who submit case or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Case and rebuttal briefs should be filed using ACCESS[10] and must be served on interested parties.[11] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[12]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[13] Parties should confirm the date, time, and location of the hearing two days before the scheduled date. Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case and rebuttal briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act, unless extended.

Assessment Rates

Upon issuing the final results of this review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[14] If the weighted-average dumping margin for Interpipe (*i.e.,* the sole individually-examined respondent in this review) is not zero or *de minimis* (*i.e.,* greater than or equal to 0.5 percent) in the final results of this review, we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of dumping calculated for the examined sales made during the POR to each importer and the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1). Where an importer-specific *ad valorem* assessment rate is zero or *de minimis* in the final results of the review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[15] If Interpipe's weighted-average dumping margin is zero or *de minimis* in the final results of the review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.,* ''{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis,* no antidumping duties will be assessed.'' [16]

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by Interpipe for which the producer did not know its merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate (*i.e.,* 7.47 percent) [17] if there is no rate for the intermediate company (or companies) involved in the transaction.[18]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or

[8] *See* 19 CFR 351.309(c)(1)(ii).

[9] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (March 26, 2020) (''To provide adequate time for release of case briefs via ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications remain in effect)'').

[10] *See* 19 CFR 351.309(c)(2) and (d)(2); *see also* 19 CFR 351.303 (for general filing requirements).

[11] *See* 19 CFR 351.303(f).

[12] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[13] *See* 19 CFR 351.310(d).

[14] *See* 19 CFR 351.212(b)(1).

[15] *See* 19 CFR 351.106(c)(2).

[16] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

[17] *See Order,* 84 FR at 33919.

[18] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Interpipe will be equal to the weighted-average dumping margin established in the final results of this administrative review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or in the less-than-fair-value investigation (LTFV) but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be the all-others rate of 7.47 percent, the rate established in the LTFV investigation of this proceeding.[19] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h)(2) and 351.221(b)(4).

Dated: July 28, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2023–16579 Filed 8–2–23; 8:45 am]

BILLING CODE 3510–DS–P

[19] *See Order,* 84 FR at 33919.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–854]

Certain Steel Nails From Taiwan: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, Preliminary Determination of No Reviewable Sales, and Partial Rescission of Review; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that Your Standing International, Inc. (YSI), Shang Jeng Nail Co., Ltd. (Shang Jeng), World Kun Company Limited (World Kun), and the non-individually-examined companies for which a review was requested made sales of certain steel nails (nails) from Taiwan at prices below normal value (NV) during the period of review (POR), July 1, 2021, through June 30, 2022. Commerce also preliminarily finds that three companies, Concord International Engineering & Trading Co., Ltd. (Concord International), Wiresmith Industrial Co., Ltd. (Wiresmith), and Create Trading Co., Ltd. (Create Trading) had no reviewable sales of nails from Taiwan during the POR, and four other companies made no shipments of subject merchandise during the POR. We invite interested parties to comment on these preliminary results.

DATES: Applicable August 3, 2023.

FOR FURTHER INFORMATION CONTACT: Faris Montgomery, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1537.

SUPPLEMENTARY INFORMATION:

Background

On July 13, 2015, Commerce published the antidumping duty order on nails from Taiwan.[1] On September 6, 2022, in accordance with 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the *Order.*[2] Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), on March 8, 2023, Commerce determined that it was not practicable to complete the preliminary results of this review within 245 days and extended the deadline for the preliminary results of this review by 117 days, until July 28, 2023.[3]

For a detailed description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is available via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be found at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The merchandise covered by this *Order* are certain steel nails from Taiwan. The certain steel nails subject to the *Order* are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to this *Order* also may be classified under HTSUS subheadings 7907.00.60.00, 8206.00.00.00 or other HTSUS subheadings. Although the HTSUS subheadings are provided for convenience and for customs purposes,

[1] *See Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders,* 80 FR 39994 (July 13, 2015) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 54463 (September 6, 2022) (*Initiation Notice*).

[3] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated March 8, 2023.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Certain Steel Nails from Taiwan; 2021–2022,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

the written product description, available in the Preliminary Decision Memorandum, remains dispositive.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. Because all requests for administrative review of Faithful Engineering Products Co., Ltd. were withdrawn by interested parties within 90 days of the date of publication of the *Initiation Notice,* Commerce is rescinding this review with respect to this company, in accordance with 19 CFR 351.213(d)(1). The administrative review remains active with respect to 140 companies.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum.

Preliminary Determination of No Shipments

Commerce received no-shipment certifications from four companies: Astrotech Steels Private Limited (Astrotech); Region Systems Sdn. Bhd (Region Systems); Region Industries Co., Ltd. (Region Industries); and Region International Co. Ltd. (Region International). To confirm these companies' no-shipment claims, Commerce issued a no-shipment inquiry to U.S. Customs and Border Protection (CBP) and received no contradictory information.[5] Therefore, we preliminarily determine that these four companies did not have any shipments of subject merchandise during the POR. Consistent with Commerce's practice, we will not rescind the review with respect to these companies, but, rather, will complete the review and issue appropriate assessment instructions based on the final results.

Preliminary Determination of No Reviewable Sales

Wiresmith and Create Trading are resellers of subject merchandise that reported that they had no reviewable sales or shipments during the POR. The resellers provided sales documentation, such as invoices and packing lists from their unaffiliated suppliers, as well as accounting records as evidence in support of their claims. Additionally, mandatory respondent Concord International provided timely responses to Commerce's antidumping duty questionnaire and supplemental questionnaires. Concord International reported in its questionnaire responses that its unaffiliated supplier had knowledge that the steel nails they produced and sold to it were destined for the United States.

Based on the information provided by Wiresmith, Create Trading, and Concord International, we preliminarily determine that these three companies were not the first parties in the transaction chain to have knowledge that the subject merchandise was destined for the United States and, thus, Wiresmith, Create Trading, and Concord International are not considered the exporters of subject merchandise during the POR for purposes of this review. Specifically, the record demonstrates that Wiresmith, Create Trading, and Concord International's respective unaffiliated suppliers had knowledge that the steel nails they produced and sold to the resellers were destined for the United States. Thus, we preliminarily determine that Wiresmith, Create Trading, and Concord International had no reviewable sales of subject merchandise during the POR.

Commerce finds that, based on the clarification in the 2003 *Assessment of Antidumping Duties*[6] notice regarding the reseller policy, we will not rescind the review in these circumstances but, rather, complete the review with respect to the resellers and issue appropriate instructions to CBP after the completion of the review.[7] Specifically, we preliminarily find it appropriate in this case to instruct CBP at the completion of the review to liquidate any existing entries of subject merchandise produced and exported by the resellers' respective unaffiliated suppliers at the rate applicable to the unaffiliated producers, or the all-others rate if there is no rate for the unaffiliated producers.[8]

Facts Available

Pursuant to section 776(a)(1) and 776(a)(2)(A)–(C) of the Act, Commerce is preliminarily relying upon facts otherwise available to assign estimated dumping margins to mandatory respondents Shang Jeng and World Kun because both companies were unresponsive to our requests for information, thereby withholding necessary information that was requested by Commerce, failing to provide the information requested by the specified deadlines in the form and manner requested, and significantly impeding the conduct of the review. Further, Commerce preliminarily finds that Shang Jeng and World Kun failed to cooperate by not acting to the best of their ability to comply with requests for information and, thus, Commerce is applying an adverse inference in selecting among the facts available, in accordance with section 776(b) of the Act. As adverse facts available, we are assigning these companies a rate of 78.17 percent, which is the highest rate applied in any segment of this proceeding. For a full description of the methodology underlying our conclusions regarding the application of adverse facts available, *see* the Preliminary Decision Memorandum.

Verification

As provided in section 782(i)(3) of the Act, Commerce intends to verify the information reported by companies in this administrative review for consideration in the final results.

Rate for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a weighted-average dumping margin to be determined for companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an antidumping duty investigation, for guidance when determining the weighted-average dumping margin for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of

[5] *See* Memorandum, ''No Shipment Inquiry for Various Companies During the Period 07/01/2021 through 06/30/2022,'' dated July 19, 2023.

[6] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment of Antidumping Duties*).

[7] *Id.*

[8] *See, e.g., Certain Frozen Warmwater Shrimp from India: Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 77610, 77612 (December 19, 2008); *Certain Pasta from Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 23974, 23977 (April 29, 2011), unchanged in *Pasta from Turkey: Notice of Final Results of the 14th Antidumping Duty Administrative Review,* 76 FR 68399 (November 4, 2011); *see also Certain Steel Nails from Taiwan: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Partial Rescission of Review; 2020–2021,* 87 FR 35734, 35736 (June 13, 2022), unchanged in *Certain Steel Nails from Taiwan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2020–2021,* 87 FR 63034, 63035 (October 18, 2022).

the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this review, the preliminary weighted-average dumping margin for YSI is not zero, *de minimis,* or based entirely on facts otherwise available, whereas other selected mandatory respondents' preliminary weighted-average dumping margins are based entirely on facts available. Therefore, Commerce has preliminarily assigned a weighted-average dumping margin to the non-examined companies that is equal to the weighted-average dumping margin for YSI in accordance with its practice.[9]

Preliminary Results of Review

We preliminarily find that the following weighted-average dumping margins exist for the period July 1, 2021, through June 30, 2022:[10]

Exporter/producer	Weighted-average dumping margin (percent)
Your Standing International, Inc	23.16
Shang Jeng Nail Co., Ltd	78.17
World Kun Company Limited	78.17
Non-Examined Companies[10]	23.16

Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results to interested parties with an administrative protective order within five days after the date of public announcement of the preliminary results, or within five days after the publication of the preliminary results in the **Federal Register**.[11]

Interested parties will be notified of the deadline for the submission of case briefs and written comments at a later date.[12] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[13] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[14] Executive summaries should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.

All briefs and hearing requests must be filed electronically using ACCESS[15] and must be served on interested parties.[16] An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[17]

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce intends to determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this administrative review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

For an individually examined respondent whose weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent), upon completion of the final results, Commerce intends to calculate importer-specific antidumping duty assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those sales.[18] Where we do not have entered values for all U.S. sales to a particular importer, we will calculate an importer-specific, per-unit assessment rate on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total quantity of those sales. To determine whether an importer-specific, per-unit assessment rate is *de minimis,* in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values. Where either a respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we intend to instruct CBP to liquidate appropriate entries without regard to antidumping duties.[19]

For entries of subject merchandise during the POR produced by an individually examined respondent for which it did not know its merchandise was destined for the United States, we intend to instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[20]

In addition, if we continue to find no shipments of subject merchandise for Astrotech, Region Systems, Region Industries, and/or Region International in the final results, for which we preliminarily find no such shipments during the POR, any suspended entries of subject merchandise associated with these companies will be liquidated at the all-others rate. If we continue to find Concord International, Create Trading, and Wiresmith had no reviewable entries during the POR in the final results, any suspended entries of subject merchandise associated with these companies will be liquidated at the rate applicable to the unaffiliated producers, or the all-others rate if there is no rate for the unaffiliated producers.

For the companies which were not selected for individual examination, we intend to assign an antidumping duty assessment rate equal to the weighted-average dumping margin determined for

[9] *See, e.g., Certain Corrosion-Resistant Steel Products from Taiwan: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–1019,* 86 FR 28554, 28555 (May 27, 2021).

[10] *See* Appendix II for a list of these companies.

[11] *See* 19 CFR 351.224(b).

[12] *See* 19 CFR 351.309(c)(1)(ii).

[13] *See* 19 CFR 351.309(d)(1) and (2); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[14] *See* 19 CFR 351.309(c)(2) and (d)(2).

[15] *See* 19 CFR 351.303.

[16] *See* 19 CFR 351.303(f).

[17] *See Temporary Rule.*

[18] *See* 19 CFR 351.212(b)(1).

[19] *See* 19 CFR 351.106(c)(2); *see also Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[20] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

the non-examined companies in the final results of review.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future cash deposits of estimated antidumping duties, where applicable.[21]

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which the company was reviewed; (3) if the exporter is not a firm covered in this review, a prior completed review, or the less-than-fair value (LTFV) investigation, but the producer is, then the cash deposit rate will be the company-specific rate established for the most recently-completed segment of this proceeding for the producer of subject merchandise; and (4) the cash deposit rate for all other producers and exporters will continue to be 2.16 percent, the all-others rate established in the LTFV investigation.[22] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of the Review

Unless the deadline is otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of our analysis of issues raised by the parties in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

[21] *See* section 751(a)(2)(C) of the Act.

[22] *See Certain Steel Nails From Taiwan: Notice of Court Decision Not in Harmony With Final Determination in Less Than Fair Value Investigation and Notice of Amended Final Determination,* 82 FR 55090 (November 20, 2017).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213(d)(4), and 19 CFR 351.221(b)(4).

Dated: July 28, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Affiliation
V. Partial Rescission of Review
VI. Preliminary Determinations of No Shipments and No Reviewable Sales
VII. Application of Facts Available and Use of Adverse Inference
VIII. Rate for Non-Selected Companies
IX. Discussion of the Methodology
X. Currency Conversion
XI. Recommendation

Appendix II

Companies Not Selected for Individual Examination

1. A-Jax Enterprises Limited
2. A-Jax International Company Limited
3. A-Stainless International Company Limited
4. Advanced Global Sourcing Limited
5. Aimreach Enterprises Company Limited
6. Alisios International Corporation
7. Allwin Architectural Hardware Inc.
8. A.N. Cooke Manufacturing Co., Pty., Limited
9. Asia Engineered Components
10. Asia Link Industrial Corporation
11. Asia Smarten Way Corp. (Taiwan)
12. Autolink International Company Limited
13. BCR Inc.
14. Bestwell International Corporation
15. Boss Precision Works Co., Ltd.
16. Budstech CI Limited
17. Bulls Technology Company Limited
18. Canatex Industrial Company Limited
19. Cata Company Limited
20. Cenluxmetals Company Limited
21. Chang Bin Industrial Co., Ltd.
22. Channg Chin Industry Corporation
23. Charng Yu Industrial Company
24. Chen Nan Iron Wire Co., Ltd.
25. Chen Yu-Lan
26. Chia Da Fastener Company Limited
27. Chiang Shin Fasteners Industries Ltd.
28. Chin Tai Sing Precision Manufactory Co., Ltd.
29. Chun Yu Works & Company Limited
30. Cross International Co., Ltd.
31. Da Wing Industry Company Limited
32. Dar Yu Enterprise Co., Ltd.
33. Eagre International Trade Co., Ltd.
34. Ever-Top Hardware Corporation
35. Excel Components Manufacturing Co., Ltd.
36. Fastguard Fastening Systems Inc.
37. Fastnet Corporation
38. Fujian Xinhong Mech. & Elec. Co., Ltd.
39. Funtec International Co., Ltd.
40. Fuzhou Royal Floor Co., Ltd.
41. FWU Kuang Enterprise Co., Ltd.
42. GoFast Company Limited
43. H–H Fasteners Company
44. H-Locker Components Inc.
45. Hau Kawang Enterprise Co., Ltd.
46. Hecny Group
47. Hi-Sharp Industrial Corp., Ltd.
48. Hom Wei Enterprise Corporation
49. HWA Hsing Screw Industry Co., Ltd.
50. Hwaguo Industrial Fasteners Co., Ltd.
51. Hy-Mart Fastener Co., Ltd.
52. Hyup Sung Indonesia
53. In Precision Link Co., Ltd.
54. Intai Technology Corporation
55. JCH Hardware Company Inc.
56. Jet Crown International Co., Ltd.
57. Ji Li Deng Fasteners Co., Ltd.
58. Jinhai Hardware Co., Ltd.
59. Jinn Her Enterprise Limited
60. Jockey Ben Metal Enterprise Co., Ltd.
61. Kan Good Enterprise Co., Ltd.
62. Katsuhana Fasteners Corporation
63. Kay Guay Enterprises Co., Ltd.
64. Key Use Industrial Works Co., Ltd.
65. KOT Components Co., Ltd.
66. K. Ticho Industries Co., Ltd.
67. K Win Fasteners Inc.
68. Kuan Hsin Screw Industry Co., Ltd.
69. Liang Ying Fasteners Industry Co., Ltd.
70. Long Chan Enterprise Co., Ltd.
71. Lu Chu Shin Yee Works Co., Ltd.
72. Mechanical Hardwares Co.
73. Midas Union Co., Ltd.
74. Min Hwei Enterprise Co., Ltd.
75. Ming Cheng Precision Co., Ltd.
76. Ming Zhan Industrial Co., Ltd.
77. ML Global Ltd.
78. Newfast Co., Ltd.
79. Noah Enterprise Co., Ltd.
80. Nytaps Taiwan Corporation
81. Pao Shen Enterprises Co., Ltd.
82. Par Excellence Industrial Co., Ltd.
83. Pengteh Industrial Co., Ltd.
84. Pneumax Corp.
85. Printech T Electronics Corporation
86. Pro-an International Co., Ltd.
87. Pronto Great China Corp.
88. Professional Fasteners Development Co., Ltd.
89. P.S.M. Fasteners (Asia) Limited
90. Qi Ding Enterprise Co., Ltd.
91. Right Source Co., Ltd.
92. Rodex Fasteners Corp.
93. Rong Chang Metal Co., Ltd.
94. San Shing Fastech Corporation
95. SBSCQ Taiwan Limited
96. Shanxi Pioneer Hardware Industrial Co., Ltd.

97. Somax Enterprise Co., Ltd.
98. Spec Products Corporation
99. Star World Product and Trading Co., Ltd.
100. Sumeeko Industries Co., Ltd.
101. Sunshine Spring Co., Ltd.
102. Suntec Industries Co., Ltd.
103. Supreme Fasteners Corp.
104. Szu I Industries Co., Ltd.
105. Tag Fasteners Sdn. Bhd.
106. Taifas Corporation
107. Taiwan Geer-Tai Works Co., Ltd.
108. Taiwan Quality Fastener Co., Ltd.
109. Team Builder Enterprise Limited
110. Techno Associates Taiwan Co., Ltd.
111. Techup Development Co., Ltd.
112. TG Co., Ltd.
113. Tianjin Jinchi Metal Products Co. Ltd.
114. Topps Wang International Ltd.
115. Ume-Pride International Inc.
116. Unistrong Industrial Co., Ltd.
117. United Nail Products Co. Ltd.
118. Vanguard International Co., Ltd.
119. Wa Tai Industrial Co., Ltd.
120. Win Fastener Corporation
121. WTA International Co., Ltd.
122. Wumax Industry Co., Ltd.
123. Wyser International Corporation
124. Yeun Chang Hardware Tool Company Limited
125. Yng Tran Enterprise Company Limited
126. Yoh Chang Enterprise Company Limited
127. Yow Chern Company
128. Yumark Enterprises Corporation
129. Yu Tai World Co., Ltd.
130. Zenith Good Enterprise Corporation

[FR Doc. 2023–16581 Filed 8–2–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Ruling Applications Filed in Antidumping and Countervailing Duty Proceedings

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) received scope ruling applications, requesting that scope inquiries be conducted to determine whether identified products are covered by the scope of antidumping duty (AD) and/or countervailing duty (CVD) orders and that Commerce issue scope rulings pursuant to those inquiries. In accordance with Commerce's regulations, we are notifying the public of the filing of the scope ruling applications listed below in the month of June 2023.

DATES: Applicable August 3, 2023.

FOR FURTHER INFORMATION CONTACT: Terri Monroe, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–1384.

SUPPLEMENTARY INFORMATION:

Notice of Scope Ruling Applications

In accordance with 19 CFR 351.225(d)(3), we are notifying the public of the following scope ruling applications related to AD and CVD orders and findings filed in or around the month of June 2023. This notification includes, for each scope application: (1) identification of the AD and/or CVD orders at issue (19 CFR 351.225(c)(1)); (2) concise public descriptions of the products at issue, including the physical characteristics (including chemical, dimensional and technical characteristics) of the products (19 CFR 351.225(c)(2)(ii)); (3) the countries where the products are produced and the countries from where the products are exported (19 CFR 351.225(c)(2)(i)(B)); (4) the full names of the applicants; and (5) the dates that the scope applications were filed with Commerce and the name of the ACCESS scope segment where the scope applications can be found.[1] This notice does not include applications which have been rejected and not properly resubmitted. The scope ruling applications listed below are available on Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), at *https://access.trade.gov.*

Scope Ruling Applications

Common Alloy Aluminum Sheet from the People's Republic of China (China) (A–570–073/C–570–074); Aluminum composite panel;[2] produced in and exported from China; submitted by K-Tex LLC; June 1, 2023; ACCESS scope segment ''K-Tex Composite Panel.''

Certain Aluminum Foil from China (A–570–053/C–570–054); Aluminum conductor foil;[3] produced in and exported from China; submitted by Instrument Transformers, LLC (Instrument Transformers); June 1, 2023; ACCESS scope segment ''Capacitor Foil.''

Certain Carbon and Alloy Steel Threaded Rod from Taiwan (A–583–865); Certain steel headed studs;[4] produced in and exported from Taiwan; submitted by Composite Technologies International, Inc.; June 5, 2023; ACCESS scope segment ''CTI Inc. Headed Studs.''

Certain Cased Pencils from China (A–570–827); Pencils;[5] produced in and exported from the Philippines; submitted by School Specialty, LLC; June 7, 2023; ACCESS scope segment ''School Specialty.''

Common Alloy Aluminum Sheet from Bahrain (A–525–001/C–525–002); Finished aluminum coil;[6] produced in Bahrain, further processed in Jordan, and exported from Jordan; submitted by FCC Metals LLC; June 12, 2023;

[1] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300, 52316 (September 20, 2021) (*Final Rule*) (''It is our expectation that the **Federal Register** list will include, where appropriate, for each scope application the following data: (1) identification of the AD and/or CVD orders at issue; (2) a concise public summary of the product's description, including the physical characteristics (including chemical, dimensional and technical characteristics) of the product; (3) the country(ies) where the product is produced and the country from where the product is exported; (4) the full name of the applicant; and (5) the date that the scope application was filed with Commerce.'')

[2] The product is aluminum composite panel composed of a thermoplastic core sandwiched between two aluminum alloy sheets. The thermoplastic core is made from low density polyethylene (LDPE) hardener and other accessory ingredients. The aluminum alloy is made from 1100 aluminum alloy as designated by the Aluminum Association. The aluminum alloy sheets are pre-coated with polyvinylidene fluoride (PVDF). The paint is further protected by peel-off protective sheeting. The panel comes in a variety of widths and lengths, normally ranging from 1220 mm to 1500mm in width and 2000mm to 6050mm in length. The panels come in two thicknesses: 3mm and 4mm. For the 3mm composite panel, the thickness of each aluminum alloy sheet is 0.21mm. For the 4mm composite panel, the thickness of each aluminum alloy sheet is 0.25mm.

[3] The products are two types of aluminum capacitor foil: (1) pre-slit, annealed foil, and (2) master logs of unannealed foil. Both types are made with aluminum alloys with aluminum content above 99 percent, are 5 microns (0.005 mm or 0.00019 inch) thick, and are imported in reels greater than 25 pounds. Neither type is backed or cut-to-shape. Both types of aluminum capacitor foil at issue are used in high-voltage capacitors that are manufactured by Instrument Transformers in the United States and sold to GE Grid. Instrument Transformers uses the aluminum capacitor foil only for its conductivity properties, and not for its barrier, thermal, reflective, or insulation properties. The conductivity properties of the aluminum capacitor foil functions in the capacitors by conducting electricity.

[4] The products are four types of steel headed collar studs used to mount car side mirrors on automobiles. One side of the headed stud is anchored into the mirror and the other side is mounted on the automobile and attached using a nut. The steel headed studs are identified as part numbers 2003.1027CTI, 2012.0306, 1405307CTI, and 1448160CTI.

[5] The products are three types of pencils: #2 pencils, drawing pencils, and colored pencils. The #2 pencils are made with graphite lead and basswood. The #2 pencils are painted in a variety of colors, and they are tipped with silver ferules and erasers. The drawing pencils are made with graphite lead and basswood, and the barrels are painted red and black. The drawing pencils are offered with different degrees of lead hardness (6B, 4B, 2B, B, HB, or 2H). The colored pencils are made of basswood and a 3.3mm wax/clay core. Each drawing pencil barrel is painted entirely in the color that corresponds to the core color.

[6] The product is common alloy aluminum sheet that is imported on spools and measuring approximately 50 inches in width by 0.56 millimeters in thickness (sizes vary depending on U.S. customer specifications). The product is installed on buildings and houses as sheet metal roofing product.

ACCESS scope segment ''FCC Metals LLC—Finished Aluminum Coil.''

Certain Carbon and Alloy Steel Threaded Rod from Taiwan (A–583–865); Certain non-circular headed studs;[7] produced in and exported from Taiwan; submitted by Component Technologies International, Inc.; June 30, 2023; ACCESS scope segment ''CTI Inc. Headed Studs 2.''

Notification to Interested Parties

This list of scope ruling applications is not an identification of scope inquiries that have been initiated. In accordance with 19 CFR 351.225(d)(1), if Commerce has not rejected a scope ruling application nor initiated the scope inquiry within 30 days after the filing of the application, the application will be deemed accepted and a scope inquiry will be deemed initiated the following day—day 31.[8] Commerce's practice generally dictates that where a deadline falls on a weekend, Federal holiday, or other non-business day, the appropriate deadline is the next business day.[9] Accordingly, if the 30th day after the filing of the application falls on a non-business day, the next business day will be considered the ''updated'' 30th day, and if the application is not rejected or a scope inquiry initiated by or on that particular business day, the application will be deemed accepted and a scope inquiry will be deemed initiated on the next business day which follows the ''updated'' 30th day.[10]

In accordance with 19 CFR 351.225(m)(2), if there are companion AD and CVD orders covering the same merchandise from the same country of origin, the scope inquiry will be conducted on the record of the AD proceeding. Further, please note that pursuant to 19 CFR 351.225(m)(1), Commerce may either apply a scope ruling to all products from the same country with the same relevant physical characteristics, (including chemical, dimensional, and technical characteristics) as the product at issue, on a country-wide basis, regardless of the producer, exporter, or importer of those products, or on a company-specific basis.

For further information on procedures for filing information with Commerce through ACCESS and participating in scope inquiries, please refer to the Filing Instructions section of the Scope Ruling Application Guide, at *https://access.trade.gov/help/Scope_Ruling_Guidance.pdf.* Interested parties, apart from the scope ruling applicant, who wish to participate in a scope inquiry and be added to the public service list for that segment of the proceeding must file an entry of appearance in accordance with 19 CFR 351.103(d)(1) and 19 CFR 351.225(n)(4). Interested parties are advised to refer to the case segment in ACCESS as well as 19 CFR 351.225(f) for further information on the scope inquiry procedures, including the timelines for the submission of comments.

Please note that this notice of scope ruling applications filed in AD and CVD proceedings may be published before any potential initiation, or after the initiation, of a given scope inquiry based on a scope ruling application identified in this notice. Therefore, please refer to the case segment on ACCESS to determine whether a scope ruling application has been accepted or rejected and whether a scope inquiry has been initiated.

Interested parties who wish to be served scope ruling applications for a particular AD or CVD order may file a request to be included on the annual inquiry service list during the anniversary month of the publication of the AD or CVD order in accordance with 19 CFR 351.225(n) and Commerce's procedures.[11]

Interested parties are invited to comment on the completeness of this monthly list of scope ruling applications received by Commerce. Any comments should be submitted to James Maeder, Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, via email to *CommerceCLU@trade.gov.*

This notice of scope ruling applications filed in AD and CVD proceedings is published in accordance with 19 CFR 351.225(d)(3).

Dated: July 28, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–16533 Filed 8–2–23; 8:45 am]

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[7] The products are five types of non-circular headed collar studs, which are identified as part numbers AF027010, B34–6005, 5445362/CTI, 2003.2021, and HW100149. Part AF020710 is a headed square collar stud used to mount heavy truck suspensions to the truck frame. Part B34–6005 is a headed square/hex collar stud used to mount heavy truck bumpers to the frame of the truck. Part 54455362/CTI is a headed hex flange collar stud used to mount car side mirrors on automobiles. Part 2003.2021 is a headed hex collar stud used to mount car side mirrors on automobiles. Part HW100149 is a brass, headed hex collar stud used in the marine industry.

[8] In accordance with 19 CFR 351.225(d)(2), within 30 days after the filing of a scope ruling application, if Commerce determines that it intends to address the scope issue raised in the application in another segment of the proceeding (such as a circumvention inquiry under 19 CFR 351.226 or a covered merchandise inquiry under 19 CFR 351.227), it will notify the applicant that it will not initiate a scope inquiry, but will instead determine if the product is covered by the scope at issue in that alternative segment.

[9] *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[10] This structure maintains the intent of the applicable regulation, 19 CFR 351.225(d)(1), to allow day 30 and day 31 to be separate business days.

[11] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–908]

Passenger Vehicle and Light Truck Tires From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminary determines that Hankook Tire Mfg Co. Ltd. (Hankook) and Nexen Tire Corporation (Nexen) made sales of passenger vehicle and light truck tires (passenger tires) from the Republic of Korea (Korea) at prices below normal value (NV) during the period of review (POR), January 6, 2021, through June 30, 2022. We invite interested parties to comment on these preliminary results.

DATES: Applicable August 3, 2023.

FOR FURTHER INFORMATION CONTACT: Charles DeFilippo and Jun Jack Zhao, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3797 and (202) 482–1396, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 19, 2021, Commerce published in the **Federal Register** the antidumping duty order on passenger tires from Korea.[1] On July 1, 2022, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the

[1] *See Passenger Vehicle and Light Truck Tires From the Republic of Korea, Taiwan, and Thailand: Antidumping Duty Orders and Amended Final Affirmative Antidumping Duty Determination for Thailand,* 86 FR 38011 (July 19, 2021) (*Order*).

Order.[2] On September 6, 2022, based on timely requests for review and in accordance with 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the *Order*.[3] Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), Commerce extended the deadline for the preliminary results until July 28, 2023.[4]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[5] A list of the topics included in the Preliminary Decision Memorandum is included as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The products covered by the *Order* are passenger tires from Korea. The products covered by this *Order* are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.10.1010, 4011.10.1020, 4011.10.1030, 4011.10.1040, 4011.10.1050, 4011.10.1060, 4011.10.1070, 4011.10.5000, 4011.20.1005, and 4011.20.5010. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.90.1010, 4011.90.1050, 4011.90.2010, 4011.90.2050, 4011.90.8010, 4011.90.8050, 8708.70.4530, 8708.70.4546, 8708.70.4548, 8708.70.4560, 8708.70.6030, 8708.70.6045, and 8708.70.6060. While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive. For a full description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. Export price and constructed export price are calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum.

Rate for Non-Examined Companies

The Act and Commerce's regulations do not address the establishment of a weighted-average dumping margin to be determined for companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a less-than-fair-value investigation, for guidance when determining the weighted-average dumping margin for companies which were not selected for individual examination in an administrative review.

Section 735(c)(5)(A) of the Act provides that Commerce will base the all-others rate on the weighted average of the estimated weighted-average dumping margins calculated for the individually examined respondents, excluding rates that are zero, *de minimis,* or based entirely on facts available. Where the estimated weighted-average dumping margin for each of the individually examined companies is zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated.''

In this review, the preliminary weighted-average dumping margins for Hankook and Nexen are not zero, *de minimis,* or based entirely on facts otherwise available. Therefore, we have preliminarily assigned a weighted-average dumping margin to the non-examined company, Kumho Tire Co., Inc., that is equal to the weighted average of the weighted-average dumping margins calculated for Hankook and Nexen, consistent with the guidance in section 735(c)(5)(A) of the Act.[6]

Preliminary Results of Review

As a result of this review, Commerce preliminarily determines that the following weighted-average dumping margins exists for the period January 6, 2021, through June 30, 2022:

Producer/exporter	Weighted-average dumping margin (percent)
Hankook Tire Mfg Co. Ltd	19.45
Nexen Tire Corporation	4.23
Kumho Tire Co., Inc	12.61

Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results to interested parties under administrative protective order within five days after the date of public announcement of the preliminary results, or within five days after the publication of the preliminary results in the **Federal Register**.[7]

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[8] Interested parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[9] Executive summaries should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of issues to be

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List,* 87 FR 39461 (July 1, 2022).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Review,* 87 FR 54463 (September 6, 2022).

[4] *See* Memoranda, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated March 29, 2023; and ''Second Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated June 5, 2023.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Administrative Review of the Antidumping Duty Order on Passenger Vehicle and Light Truck Tires from the Republic of Korea; 2021–2022'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See* Memorandum, ''Preliminary Results of the Antidumping Duty Administrative Review of Passenger Vehicles and Light Truck Tires from the Republic of Korea: Rate for Non-Examined Companies,'' dated concurrently with this notice.

[7] *See* 19 CFR 351.224(b).

[8] *See* 19 CFR 351.309(d)(1) and (2); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[9] *See* 19 CFR 351.309(c)(2) and (d)(2).

discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.

All briefs and hearing requests must be filed electronically using ACCESS [10] and must be served on interested parties.[11] An electronically filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[12]

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce intends to determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this administrative review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

For an individually examined respondent whose weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent), Commerce intends to calculate importer-specific antidumping duty assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those sales. Where we do not have entered values for all U.S. sales to a particular importer, we will calculate an importer-specific, per-unit assessment rate on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total quantity of those sales.[13] To determine whether an importer-specific, per-unit assessment rate is *de minimis,* in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values. Where either a respondent's weighted average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we intend to instruct CBP to liquidate appropriate entries without regard to antidumping duties.[14]

For entries of subject merchandise during the POR produced by each individually examined respondent for which it did not know its merchandise was destined for the United States, we intend to instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[15]

For a company which was not selected for individual examination, we intend to assign an antidumping duty assessment rate equal to the weighted-average dumping margin determined for the non-examined company in the final results of review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review, and for future cash deposits of estimated antidumping duties, where applicable.[16]

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review in the **Federal Register**, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the exporters listed above will be the rate established in the final results of this review (except, if the rate is zero or *de minimis,* then no cash deposit will be required); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair value investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 21.74 percent, the all-others rate established in the less-than-fair value investigation.[17]

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: July 28, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2023–16595 Filed 8–2–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Polyethylene Terephthalate Film, Sheet, and Strip From India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on polyethylene terephthalate film, sheet, and strip (PET film) from India. The period of review (POR) is July 1, 2021, through June 30, 2022. This review covers the following producers and

[10] *See* 19 CFR 351.303.

[11] *See* 19 CFR 351.303(f).

[12] *See Temporary Rule.*

[13] *See* 19 CFR 351.212(b)(1).

[14] *See* 19 CFR 351.106(c)(2); *see also Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[15] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[16] *See* section 751(a)(2)(C) of the Act.

[17] *See Order.*

exporters from India: Jindal Poly Films Ltd. (Jindal) and SRF Limited (SRF). We preliminarily find that SRF did not sell PET film in the United States below normal value (NV). Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 3, 2023.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Jacob Saude, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5255 or (202) 482–0981, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2002, Commerce published the order in the **Federal Register**.[1] On July 1, 2022, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.[2] On September 6, 2022, in accordance with 19 CFR 351.221(c)(1)(i), Commerce published a notice of initiation of an administrative review of the *Order*.[3] On March 22, 2023, and June 9, 2023, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213(h)(2), Commerce extended the due date for the preliminary results until July 28, 2023.[4]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[5] A list of the topics included in the Preliminary Decision Memorandum is included as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The merchandise subject to the *Order* is PET film. The product is currently classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS number is provided for convenience and for customs purposes, the written product description, available in the Preliminary Decision Memorandum, remains dispositive.

Partial Rescission

Commerce initiated a review of eight companies in this review. We are rescinding this administrative review with respect to six of these companies: (1) Ester Industries Ltd.; (2) Garware Polyester Ltd.; (3) MTZ Polyesters Ltd.; (4) Polyplex Corporation; (5) Uflex Ltd.; and (6) Vacmet India, pursuant to 19 CFR351.213(d)(1), because all review requests for these companies were timely withdrawn. Accordingly, the companies that remain subject to the instant review are Jindal and SRF.

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Act. Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

As a result of this review, Commerce preliminarily determines that the following weighted-average dumping margins exist for the period July 1, 2021, through June 30, 2022:

Exporter/producer	Weighted-average dumping margin (percent)
Jindal Poly Films Ltd	0.00
SRF Limited	0.00

Company Not Selected for Individual Review

The Act and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' However, where the dumping margins for individually examined respondents are all zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.''

In this review, we have preliminarily calculated a weighted-average dumping margin for SRF, the sole mandatory respondent, that is zero. Accordingly, Commerce preliminarily has assigned to Jindal, the company not individually examined, a margin of 0.00 percent.

Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results of review to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b) public announcement.[6] Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[7] Interested parties who submit

[1] *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India,* 67 FR 44174 (July 1, 2002) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding or Suspended Investigation; Opportunity to Request Administrative Review,* 87 FR 39461, 39462 (July 1, 2022).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 54463, 54465 (September 6, 2022).

[4] *See* Commerce's Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2021–2022,'' dated March 22, 2023; *see also* Commerce's Memorandum, ''Second Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2021–2022,'' dated June 9, 2023.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India; 2021–2022,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (March 26, 2020) (''To provide adequate time for release of case briefs

Continued

case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[8] Executive summaries should be limited to five pages total, including footnotes. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[9]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212(b). If a respondent's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate importer-specific *ad valorem* assessment rates on the basis of the ratio of the total amount of dumping calculated for an importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1). Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For entries of subject merchandise during the POR produced by an individually examined respondent for which it did not know its merchandise was destined for the United States, we intend to instruct CBP to liquidate such entries at the all-others rate (*i.e,* 5.71 percent) if there is no rate for the intermediate company(ies) involved in the transaction.[10]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this administrative review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of PET film from India entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Jindal and SRF will be the rate established in the final results of this review (except, if the rate is zero or *de minimis,* no cash deposit will be required); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other producers or exporters is 5.71 percent.[11] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: July 26, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2023–16543 Filed 8–2–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD215]

Endangered Species; File No. 23639

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

ACTION: Notice; receipt of application for a permit modification.

SUMMARY: Notice is hereby given that Coonamessett Farm Foundation, Inc., 277 Hatchville Road, East Falmouth, MA 02536, (Responsible Party: Ronald Smolowitz), has requested a modification to scientific research Permit No. 23639–01.

DATES: Written comments must be received on or before September 5, 2023.

ADDRESSES: The modification request and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 23639 mod 5 from the

via ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications remain in effect).'').

[8] *See* 19 CFR 351.309(c)(2) and (d)(2).

[9] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[10] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[11] *See Order.*

list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 23639 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Erin Markin, Ph.D., (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 23639, issued on September 25, 2020 (85 FR 63524, October 8, 2020) is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 23639–01 authorizes the permit holder to study the behavior and distributions of green (*Chelonia mydas*), Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and loggerhead (*Caretta caretta*) sea turtles in U.S. waters from Maine through North Carolina. Researchers may capture sea turtles by dip or encirclement net, and perform the following procedures before release: morphometrics, photography, marking, a suite of biological sampling, and transmitter attachment. After release, animals may be temporarily tracked with an underwater remotely operated vehicle (ROV). Leatherbacks may be sighted and tracked by a manned aircraft for subsequent vessel-based research later in the same day involving remote attachment of a suction-cup tag, ROV tracking, and remote passive integrated transponder (PIT) tag scanning. Sea turtles may also be pursued during unsuccessful capture or remote tagging attempts. The permit holder requests authorization to: (1) increase the number of Kemp's ridley sea turtles captured from 15 to 30 annually; (2) increase the number of loggerhead sea turtles captured from 30 to 60 annually; (3) attach up to 2 transmitters (acoustic + satellite or camera tag) at a time on large hard-shelled turtles; and (4) add 2 satellite tag models as alternative tag unit options when tagging hard-shelled turtles. This modification would accommodate new funding to conduct sea turtle surveys that would inform wind energy development in the Atlantic. The modification would be valid until the permit expires on September 30, 2030.

Dated: July 28, 2023.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–16495 Filed 8–2–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD167]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Cost Recovery Program

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

ACTION: Notification of fee percentage.

SUMMARY: NMFS publishes notification of a 3 percent fee for cost recovery under the Bering Sea and Aleutian Islands Crab Rationalization Program. This action is intended to provide holders of crab allocations with the 2023/2024 crab fishing year fee percentage so they can calculate the required cost recovery fee payment, which must be submitted to NMFS by July 31, 2024.

DATES: The Crab Rationalization Program Registered Crab Receiver permit holder is responsible for submitting the fee liability payment to NMFS by July 31, 2024.

FOR FURTHER INFORMATION CONTACT: Amy Hadfield, (907) 586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS Alaska Region administers the Bering Sea and Aleutian Islands Crab Rationalization Program (Program) in the North Pacific. Fishing under the Program began on August 15, 2005. Regulations implementing the Program can be found at 50 CFR part 680.

The Program is a limited access privilege program authorized by section 313(j) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Program includes a cost recovery provision to collect fees to recover the actual costs directly related to the management, data collection, and enforcement of the Program. The Program is consistent with the cost recovery provisions included under section 304(d)(2)(A) of the Magnuson-Stevens Act. NMFS developed the cost recovery regulations to conform to statutory requirements and to reimburse the agency for the actual costs directly related to the management, data collection, and enforcement of the Program. The cost recovery provision allows collection of 133 percent of the actual management, data collection, and enforcement costs not to exceed 3 percent of the ex-vessel value of crab harvested under the Program. The Program provides that a proportional share of fees charged will be forwarded to the State of Alaska for reimbursement of its share of management and data collection costs for the Program.

A crab allocation holder generally incurs a cost recovery fee liability for every pound of crab landed. Catcher vessel and processor quota shareholders split the cost recovery fees equally with each paying half, while catcher/processor quota shareholders pay the full fee percentage for crab processed at sea. The crab allocations subject to cost recovery include Individual Fishing Quota, Crew Individual Fishing Quota, Individual Processing Quota, Community Development Quota, and the Adak community allocation. The Registered Crab Receiver (RCR) permit holder must collect the fee liability from the crab allocation holder who is landing crab. Additionally, the RCR permit holder must collect their own fee liability for all crab delivered to the RCR. The RCR permit holder is responsible for submitting this payment to NMFS on or before July 31, in the year following the crab fishing year in which landings of crab were made.

The dollar amount of the fee due is determined by multiplying the fee percentage (not to exceed 3 percent) by the ex-vessel value of crab debited from the allocation. Program details may be found in the implementing regulations at 50 CFR 680.44.

Fee Percentage

Each year, NMFS calculates and publishes in the **Federal Register** the fee percentage according to the factors and methodology described at § 680.44(c)(2). The formula for determining the fee percentage is the ''direct program costs'' divided by ''value of the fishery,'' where ''direct program costs'' are the direct program costs for the Program for the previous fiscal year, and ''value of the fishery'' is the ex-vessel value of the catch subject to the crab cost recovery fee liability for the current year. Fee collections for any given year may be less than or greater than the actual costs

and fishery value for that year, as regulations establish the fee percentage in the first quarter of the crab fishing year based on the fishery value and costs in the prior year.

According to the fee percentage formula described above, the estimated percentage of costs to value for the 2022/2023 fishery was 5.93 percent. As this is higher than the maximum fee percentage, the fee percentage will be 3 percent for the 2023/2024 crab fishing year. This is an increase by approximately 0.77 percentage points from the 2022/2023 crab fishing year fee percentage of 2.23 percent (87 FR 41292, July 12, 2022). Direct program costs for managing the fishery increased by approximately 10 percent from 2022/2023 to 2023/2024, while fishery value decreased by approximately 58 percent, resulting in the increased fee percentage. Similar to previous years, the largest direct Program costs were incurred by the NOAA Office of Law Enforcement and the State of Alaska Department of Fish and Game, respectively.

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

Dated: July 28, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–16524 Filed 8–2–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD192]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of issuance of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to Anadarko Petroleum Corporation (Anadarko) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from September 1, 2023, through August 31, 2024.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Rachel Wachtendonk, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322, January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

Anadarko plans to conduct a 3-Dimensional (3D) ocean bottom node (OBN) survey in the Green Canyon protraction areas, around lease block GC 517. Approximate water depths of the survey area range from 1,000 to 1,500 meters (m). See section F of the LOA application for a map of the area.

Anadarko anticipates using a single source vessel, towing an airgun array consisting of 32 elements, with a total volume of 5,110 cubic inches (in^3). Please see Anadarko's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by Anadarko in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5398, January 19, 2021). In order to generate the appropriate take numbers for authorization, the following information was considered: (1) survey type; (2)

location (by modeling zone; [1]) (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

No 3D OBN surveys were included in the modeled survey types, and use of existing proxies (*i.e.,* 2D, 3D NAZ, 3D WAZ, Coil) is generally conservative for use in evaluation of 3D OBN survey effort, largely due to the greater area covered by the modeled proxies. Summary descriptions of these modeled survey geometries are available in the preamble to the proposed rule (83 FR 29220, June 22, 2018). Coil was selected as the best available proxy survey type in this case because the spatial coverage of the planned survey is most similar to the Coil survey pattern. The planned 3D OBN survey will involve a single source vessel sailing along survey lines approximately 43 kilometers (km) in length. The coil survey pattern was assumed to cover approximately 144 kilometers squared (km^2) per day (compared with approximately 795 km^2, 199 km^2, and 845 km^2 per day for the 2D, 3D NAZ, and 3D WAZ survey patterns, respectively). Among the different parameters of the modeled survey patterns (*e.g.,* area covered, line spacing, number of sources, shot interval, total simulated pulses), NMFS considers area covered per day to be most influential on daily modeled exposures exceeding Level B harassment criteria. Although Anadarko is not proposing to perform a survey using the coil geometry, its planned 3D OBN survey is expected to cover approximately 100 km^2 per day, meaning that the coil proxy is most representative of the effort planned by Anadarko in terms of predicted Level B harassment exposures.

All available acoustic exposure modeling results assume use of a 72-element, 8,000 in^3 array. Thus, take numbers authorized through the LOA are considered conservative due to differences in the sound sources planned for use (32 element, 5,110 in^3 airgun array), as compared to the source modeled for the rule.

The survey will take place over approximately 42 days, including 40 days of sound source operation, all within Zone 5. The seasonal distribution of survey days is not known in advance. Therefore, the take estimates for each species are based on the season that produces the greater value.

For some species, take estimates based solely on the modeling yielded results that are not realistically likely to occur when considered in light of other relevant information available during the rulemaking process regarding marine mammal occurrence in the GOM. The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, the rule acknowledged that other information could be considered (see, *e.g.,* 86 FR 5442, January 19, 2021), discussing the need to provide flexibility and make efficient use of previous public and agency review of other information and identifying that additional public review is not necessary unless the model or inputs used differ substantively from those that were previously reviewed by NMFS and the public. For this survey, NMFS has other relevant information reviewed during the rulemaking that indicates use of the acoustic exposure modeling to generate a take estimate for certain marine mammal species produces results inconsistent with what is known regarding their occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates for those species as described below.

NMFS' final rule described a ''core habitat area'' for Rice's whales (formerly known as GOM Bryde's whales) [3] located in the northeastern GOM in waters between 100–400 m depth along the continental shelf break (Rosel *et al.,* 2016).However, whaling records suggest that Rice's whales historically had a broader distribution within similar habitat parameters throughout the GOM (Reeves *et al.,* 2011; Rosel and Wilcox, 2014). In addition, habitat-based density modeling identified similar habitat (*i.e.,* approximately 100–400 m water depths along the continental shelf break) as being potential Rice's whale habitat (Roberts *et al.,* 2016), although the core habitat area contained approximately 92 percent of the predicted abundance of Rice's whales. See discussion provided at, *e.g.,* 83 FR 29228, 83 FR 29280 (June 22, 2018); 86 FR 5418 (January 19, 2021).

Although Rice's whales may occur outside of the core habitat area, we expect that any such occurrence would be limited to the narrow band of suitable habitat described above (*i.e.,* 100–400 m) and that, based on the few available records, these occurrences would be rare. Anadarko's planned activities will occur in water depths of approximately 1,000–1,500 m in the central GOM. Thus, NMFS does not expect there to be the reasonable potential for take of Rice's whale in association with this survey and, accordingly, does not authorize take of Rice's whale through this LOA.

Killer whales are the most rarely encountered species in the GOM, typically in deep waters (≤ 700 m) of the central GOM (Roberts *et al.,* 2015; Maze-Foley and Mullin, 2006). The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. NMFS has determined that the approach results in unrealistic projections regarding the likelihood of encountering killer whales.

As discussed in the final rule, the density models produced by Roberts *et al.* (2016) provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. GOM. The predictions represent the output of models derived from multi-year observations and associated environmental parameters that incorporate corrections for detection bias. However, in the case of killer whales, the model is informed by few data, as indicated by the coefficient of variation associated with the abundance predicted by the model (0.41, the second-highest of any GOM species model; Roberts *et al.,* 2016). The model's authors noted the expected non-uniform distribution of this rarely-encountered species (as discussed above) and expressed that, due to the limited data available to inform the model, it ''should be viewed cautiously'' (Roberts *et al.,* 2015).

NOAA surveys in the GOM from 1992–2009 reported only 16 sightings of killer whales, with an additional 3 encounters during more recent survey effort from 2017–18 (Waring *et al.,* 2013; *https://www.boem.gov/gommapps*). Two other species were also observed on fewer than 20 occasions during the 1992–2009 NOAA surveys (Fraser's

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

dolphin and false killer whale [4]). However, observational data collected by protected species observers (PSOs) on industry geophysical survey vessels from 2002–2015 distinguish the killer whale in terms of rarity. During this period, killer whales were encountered on only 10 occasions, whereas the next most rarely encountered species (Fraser's dolphin) was recorded on 69 occasions (Barkaszi and Kelly, 2019). The false killer whale and pygmy killer whale were the next most rarely encountered species, with 110 records each. The killer whale was the species with the lowest detection frequency during each period over which PSO data were synthesized (2002–2008 and 2009–2015). This information qualitatively informed our rulemaking process, as discussed at 86 FR 5334 (January 19, 2021), and similarly informs our analysis here.

The rarity of encounters during seismic surveys is not likely to be the product of high bias on the probability of detection. Unlike certain cryptic species with high detection bias, such as *Kogia* spp. or beaked whales, or deep-diving species with high availability bias, such as beaked whales or sperm whales, killer whales are typically available for detection when present and are easily observed. Roberts *et al.* (2015) stated that availability is not a major factor affecting detectability of killer whales from shipboard surveys, as they are not a particularly long-diving species. Baird *et al.* (2005) reported that mean dive durations for 41 fish-eating killer whales for dives greater than or equal to 1 minute in duration was 2.3–2.4 minutes, and Hooker *et al.* (2012) reported that killer whales spent 78 percent of their time at depths between 0–10 m. Similarly, Kvadsheim *et al.* (2012) reported data from a study of 4 killer whales, noting that the whales performed 20 times as many dives 1–30 m in depth than to deeper waters, with an average depth during those most common dives of approximately 3 m.

In summary, killer whales are the most rarely encountered species in the GOM and typically occur only in particularly deep water. This survey would take place in deep waters that would overlap with depths in which killer whales typically occur. While this information is reflected through the density model informing the acoustic exposure modeling results, there is relatively high uncertainty associated with the model for this species, and the acoustic exposure modeling applies mean distribution data over areas where the species is in fact less likely to occur. NMFS' determination in reflection of the data discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for killer whales will generally result in estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected killer whale take (86 FR 5403, January 19, 2021).

In past authorizations, NMFS has often addressed situations involving the low likelihood of encountering a rare species such as killer whales in the GOM through authorization of take of a single group of average size (*i.e.,* representing a single potential encounter). See 83 FR 63268, December 7, 2018; 86 FR 29090, May 28, 2021; 85 FR 55645, September 9, 2020. For the reasons expressed above, NMFS determined that a single encounter of killer whales is more likely than the model-generated estimates and has authorized take associated with a single group encounter (*i.e.,* up to 7 animals).

Based on the results of our analysis, NMFS has determined that the level of taking expected for this survey and authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See Table 1 in this notice and Table 9 of the rule (86 FR 5322, January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5438, January 19, 2021).

The take numbers for authorization are determined as described above in the Summary of Request and Analysis section. Subsequently, the total incidents of harassment for each species are multiplied by scalar ratios to produce a derived product that better reflects the number of individuals likely to be taken within a survey (as compared to the total number of instances of take), accounting for the likelihood that some individual marine mammals may be taken on more than one day (see 86 FR 5404, January 19, 2021). The output of this scaling, where appropriate, is incorporated into adjusted total take estimates that are the basis for NMFS' small numbers determinations, as depicted in Table 1.

This product is used by NMFS in making the necessary small numbers determinations through comparison with the best available abundance estimates (see discussion at 86 FR 5391, January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take	Scaled take [1]	Abundance [2]	Percent abundance
Rice's whale	0	n/a	51	n/a
Sperm whale	1,052	445.0	2,207	20.2
Kogia spp	[3] 398	120.9	4,373	3.2

[4] However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales.

TABLE 1—TAKE ANALYSIS—Continued

Species	Authorized take	Scaled take [1]	Abundance [2]	Percent abundance
Beaked whales	4,644	469.0	3,768	12.4
Rough-toothed dolphin	798	229.2	4,853	4.7
Bottlenose dolphin	3,783	1,085.8	176,108	0.6
Clymene dolphin	2,247	644.8	11,895	5.4
Atlantic spotted dolphin	1,511	433.7	74,785	0.6
Pantropical spotted dolphin	10,196	2,926.1	102,361	2.9
Spinner dolphin	2,732	784.1	25,114	3.1
Striped dolphin	878	251.9	5,229	4.8
Fraser's dolphin	252	72.4	1,665	4.3
Risso's dolphin	660	194.7	3,764	5.2
Melon-headed whale	1,476	435.4	7,003	6.2
Pygmy killer whale	347	102.5	2,126	4.8
False killer whale	553	163	3,204	5.1
Killer whale	7	n/a	267	2.6
Short-finned pilot whale	427	126.0	1,981	6.4

[1] Scalar ratios were applied to ''Authorized Take'' values as described at 86 FR 5322, 5404 (January 19, 2021) to derive scaled take numbers shown here.

[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For Rice's whale and the killer whale, the larger estimated SAR abundance estimate is used.

[3] Includes 21 takes by Level A harassment and 377 takes by Level B harassment. Scalar ratio is applied to takes by Level B harassment only; small numbers determination made on basis of scaled Level B harassment take plus authorized Level A harassment take.

Based on the analysis contained herein of Anadarko's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes (*i.e.,* less than one-third of the best available abundance estimate) and therefore the taking is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to Anadarko authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: July 31, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–16577 Filed 8–2–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD204]

Atlantic Highly Migratory Species; Meeting of the Atlantic Highly Migratory Species Advisory Panel

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

ACTION: Notice of public meeting and webinar/conference call.

SUMMARY: NMFS will hold a 2-day Atlantic Highly Migratory Species (HMS) Advisory Panel (AP) meeting in September 2023. The intent of the meeting is to consider options for the conservation and management of Atlantic HMS. The meeting is open to the public.

DATES: The AP meeting and webinar will be held on Wednesday, September 6, 2023 from 9 a.m. to 5 p.m., and on Thursday, September 7, 2023 from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the DoubleTree by Hilton Silver Spring Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910. The meeting will also be accessible via WebEx webinar/conference call. Conference call and webinar access information are available at: *https://www.fisheries.noaa.gov/event/september-2023-hms-advisory-panel-meeting.*

Participants accessing the webinar are strongly encouraged to log/dial in 15 minutes prior to the meeting. NMFS will show the presentations via webinar and allow public comment during identified times on the agenda.

FOR FURTHER INFORMATION CONTACT: Peter Cooper at 301–427–8503 or *Peter.Cooper@noaa.gov.*

SUPPLEMENTARY INFORMATION: Atlantic 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 (FMP) and its amendments are implemented by regulations at 50 CFR part 635.

The Magnuson-Stevens Act requires the establishment of APs and requires NMFS to consult with and consider the comments and views of AP members during the preparation and implementation of FMPs or FMP amendments (16 U.S.C. 1854(g)(1)(A)–(B)). NMFS meets with the HMS AP approximately twice each year to consider potential alternatives for the conservation and management of Atlantic tunas, swordfish, billfish, and shark fisheries, consistent with the Magnuson-Stevens Act.

For this meeting, we anticipate discussing, among other topics:

- Amendment 15 to the 2006 Consolidated HMS FMP regarding spatial management; and
- Atlantic bluefin tuna fishery year in review.

We also anticipate inviting other NMFS offices, the U.S. Coast Guard, and the Bureau of Ocean Energy Management to provide updates, if available, on their activities relevant to HMS fisheries. Additional information on the meetings and a copy of the draft agenda will be posted prior to the meeting (see **ADDRESSES**).

All members of the public will have virtual access to the meeting available via webinar and status updates of in-person public access to the meeting will be available on the NMFS website (see **ADDRESSES**). The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Peter Cooper at 301–427–8503, at least 7 days prior to the meeting.

Dated: July 31, 2023.

Jennifer M. Wallace.

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

[FR Doc. 2023–16583 Filed 8–2–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2023–FSA–0056]

Privacy Act of 1974; Matching Program

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice of a new computer matching agreement.

SUMMARY: This document provides notice of a new Computer Matching Agreement (CMA) between the U.S. Department of Education (the Department) and the Department of Defense (DoD). The current 18-month CMA was recertified for an additional 12 months on September 1, 2022, and will automatically expire on August 31, 2023. (Note: The intention of the CMA is to match only those originally or currently covered by section 473(b)(3)(A) of the HEA.)

DATES: Submit your comments on the proposed CMA on or before September 5, 2023.

The CMA will be effective the later of: (1) September 1, 2023, or (2) 30 days after the publication of this notice, on August 3, 2023, unless comments have been received from interested members of the public requiring modification and republication of the notice. The CMA will continue for 13 months after the effective date of the CMA if the conditions specified in sections 420R and 473(b) of the Higher Education Act (HEA) (20 U.S.C. 1070h), 473(b) of the HEA (20 U.S.C. 1087mm(b)(3)) (prior to FAFSA Simplification Act implementation on July 1, 2024) and section 401(c) of the HEA (following FAFSA Simplification Act implementation), and in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), have been met. (Note: The intention of the matching program is to match applicants seeking eligibility for the DoD Iraq Afghanistan Service Grant (IASG) only through Award Year 2023–2024. The period between July 1 and September 30, 2024, will only be for ''reconciliation'' transactions for AY 2023–2024 applicants, who are subject to the pre-FAFSA Simplification Act requirements of the HEA).

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. To ensure that the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: 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 the ''FAQ'' tab.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Gerard Duffey, Management and Program Analyst, U.S. Department of Education, Federal Student Aid. Telephone: (215) 656–3249.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act; OMB Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, published in the **Federal Register** on June 19, 1989 (54 FR 25818); and OMB Circular No. A–108, notice is hereby provided of the re-establishment of the matching program between ED and DoD.

The Secretary of Defense must provide the Secretary of Education with information to identify the children of military personnel who have died as a result of their performing military service in Iraq or Afghanistan after September 11, 2001, to determine if the child is eligible for increased amounts of title IV, HEA program assistance.

Participating Agencies: The Department of Education (the Department) and the Department of Defense (DoD).

Authority for Conducting the Matching Program: ED and DoD are authorized to participate in the matching program under sections 420R and 473(b) of the HEA (20 U.S.C. 1070h and 20 U.S.C. 1087mm(b)) (prior to FAFSA Simplification Act implementation on July 1, 2024) and section 401(c) of the HEA (following FAFSA Simplification Act implementation). The legal authority for ED and DoD to disclose information under the matching program also includes subsection (b)(3) of the Privacy Act (5 U.S.C. 552a(b)(3)).

Purpose(s): The purpose of this matching program between ED and DoD is to identify children whose parent or guardian was a member of the Armed Forces of the United States and died as a result of performing military service in Iraq or Afghanistan after September 11, 2001. These children (referred to as qualifying students) may be eligible for a greater amount of title IV, HEA program assistance. A qualifying student must have been age 24 or younger at the time of the parent's or guardian's death, or, if older than 24, enrolled part-time or full-time in an institution of higher education at the time of the parent's or guardian's death. (Note: The intention of the matching program is to match applicants seeking eligibility for the DoD IASG only through Award Year 2023–2024. The period between July 1 and September 30, 2024, will only be for ''reconciliation'' transactions for AY 2023–2024 applicants, who are subject to the pre-FAFSA Simplification Act requirements of the HEA).

Verification by this matching program provides an efficient and comprehensive method of identifying students whose parent or guardian was a member of the Armed Forces of the United States and died as a result of performing military service in Iraq or Afghanistan after September 11, 2001.

Categories of Individuals: The individuals whose records are included in this matching program are dependents of service personnel who

died as a result of performing their Armed Forces military service in Iraq or Afghanistan after September 11, 2001, whose records are located in the DoD Defense Manpower Data Center (DMDC) Database (76 FR 72391) (November 23, 2011), and the Defense Enrollment Eligibility Reporting System (DEERS) (81 FR 49210) (July 27, 2016), and all students who complete a Free Application for Federal Student Aid (FAFSA).

Categories of Records: DoD uses the following data elements in this matching program: Dependent's Name, Date of Birth and Social Security Number (SSN)—extracted from DEERS; and Parent or Guardian's Date of Death—extracted from the DMDC Data Base. ED uses the SSN, date of birth, and the first two letters of an applicant's last name to match applicant records.

System(s) of Records: ED system of records: Aid Awareness and Application Processing (18–11–21)—published in the **Federal Register** on September 13, 2022 (87 FR 56026), and available at: *https://www.federalregister.gov/documents/2022/09/13/2022-19890/privacy-act-of-1974-system-of-records.* Note: The Central Processing System (CPS) will process data from the FAFSA for applicants seeking eligibility for the DoD IASG only through Award Year 2023–2024. The period between July 1 and September 30, 2024, will only be for ''reconciliation'' transactions for AY 2023–2024 applicants, who are subject to the pre-FAFSA Simplification Act requirements of the HEA. This CMA will not be used for applicants after AY 2023–2024.

DoD system of records: DMDC 01, Defense Manpower Data Center Data Base (87 FR 32145) (May 25, 2022), and DMDC 02 DoD Defense Enrollment Eligibility Reporting Systems (DEERS) (87 FR 32384) (May 25, 2022).

Accessible Format: By 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.

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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.

Richard Cordray,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2023–16563 Filed 8–2–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–111–000.

Applicants: Idaho Power Company, PacifiCorp.

Description: Errata to July 20, 2023 Joint Application for Authorization Under Section 203 of the Federal Power Act of Idaho Power Company, et al.

Filed Date: 7/27/23.

Accession Number: 20230727–5177.

Comment Date: 5 p.m. ET 8/10/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1817–028; ER10–1818–035; ER10–1819–037; ER10–1820–040.

Applicants: Northern States Power Company, a Wisconsin corporation, Northern States Power Company, a Minnesota corporation, Public Service Company of Colorado, Southwestern Public Service Company.

Description: Notice of Change in Status of Southwestern Public Service Company, et al.

Filed Date: 7/27/23.

Accession Number: 20230727–5176.

Comment Date: 5 p.m. ET 8/17/23.

Docket Numbers: ER10–2381–014; ER11–2206–015; ER11–2207–015; ER11–2209–015; ER11–2210–015; ER11–2211–015; ER11–2855–029; ER11–2856–029; ER11–2857–029; ER11–3727–021; ER12–21–027; ER12–1711–021; ER13–1150–013; ER13–1151–013; ER13–1991–028; ER13–1992–028; ER17–1217–004; ER18–814–006; ER18–2033–003; ER19–672–006; ER19–843–006; ER19–1061–006; ER19–1063–006; ER19–1200–010; ER20–486–006; ER21–963–003; ER23–175–003; ER23–1577–001.

Applicants: Daggett Solar Power 2 LLC, Daggett Solar Power 3 LLC, Silverstrand Grid, LLC, Golden Fields Solar III, LLC, Clearway Power Marketing LLC, Solar Borrego I LLC, Solar Alpine LLC, Solar Blythe LLC, Marsh Landing LLC, Saavi Energy Solutions, LLC, Carlsbad Energy Center LLC, TotalEnergies Gas & Power North America, Inc., Desert Sunlight 300, LLC, Desert Sunlight 250, LLC, Alta Wind XI, LLC, Alta Wind X, LLC, High Plains Ranch II, LLC, Agua Caliente Solar, LLC, El Segundo Energy Center LLC, Sun City Project LLC, Sand Drag LLC, Avenal Park LLC, Alta Wind I, LLC, Alta Wind III, LLC, Alta Wind II, LLC, Alta Wind IV, LLC, Alta Wind V, LLC, Walnut Creek Energy, LLC.

Description: Notice of Change in Status of Walnut Creek Energy, LLC et al.

Filed Date: 7/26/23.

Accession Number: 20230726–5165.

Comment Date: 5 p.m. ET 8/16/23.

Docket Numbers: ER22–2339–001.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Second Order No. 881 Compliance Filing to Implement Transmission Line Ratings to be effective 7/12/2025.

Filed Date: 7/28/23.

Accession Number: 20230728–5041.

Comment Date: 5 p.m. ET 8/18/23.

Docket Numbers: ER22–2513–002.

Applicants: Deerfield Wind Energy 2, LLC.

Description: Notice of Non-Material Change in Status of Deerfield Wind Energy 2, LLC, et al.

Filed Date: 7/27/23.

Accession Number: 20230727–5175.

Comment Date: 5 p.m. ET 8/17/23.

Docket Numbers: ER23–921–001.

Applicants: Black Mesa Energy, LLC.

Description: Notice of Non-Material Change in Status of Black Mesa Energy, LLC, et al.

Filed Date: 7/27/23.

Accession Number: 20230727–5173.

Comment Date: 5 p.m. ET 8/17/23.

Docket Numbers: ER23–1826–001.

Applicants: Cross-Sound Cable Company, LLC.

Description: Tariff Amendment: Response to Request for Additional Information to be effective 7/4/2023.

Filed Date: 7/28/23.

Accession Number: 20230728–5079.

Comment Date: 5 p.m. ET 8/18/23.

Docket Numbers: ER23–2501–000.

Applicants: MD Solar 2, LLC.

Description: Tariff Amendment: Notice of Cancellation and Withdrawal

of Rate Schedule to be effective 7/28/2023.

Filed Date: 7/27/23.

Accession Number: 20230727–5142.

Comment Date: 5 p.m. ET 8/17/23.

Docket Numbers: ER23–2502–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 2023–07–28—Cypress Creek Renewables—APSISA–738–0.0.0 to be effective 7/29/2023.

Filed Date: 7/28/23.

Accession Number: 20230728–5038.

Comment Date: 5 p.m. ET 8/18/23.

Docket Numbers: ER23–2503–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA and ICSA, SA Nos. 6965 and 6966; Queue No. AF2–130 to be effective 6/28/2023.

Filed Date: 7/28/23.

Accession Number: 20230728–5062.

Comment Date: 5 p.m. ET 8/18/23.

Docket Numbers: ER23–2504–000.

Applicants: Duke Energy Progress, LLC.

Description: Tariff Amendment: DEP-Lumberton—Termination of SA No. 205 to be effective 9/30/2023.

Filed Date: 7/28/23.

Accession Number: 20230728–5069.

Comment Date: 5 p.m. ET 8/18/23.

Docket Numbers: ER23–2505–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2023–07–28 Amendment to Remove Submission Deadline Revisions to be effective 10/1/2023.

Filed Date: 7/28/23.

Accession Number: 20230728–5095.

Comment Date: 5 p.m. ET 8/18/23.

Docket Numbers: ER23–2506–000.

Applicants: Duke Energy Florida, LLC.

Description: § 205(d) Rate Filing: DEF–FMPA,FMPP and Orlando CoGen Reimbursement Agmt RS No. 420 to be effective 10/1/2023.

Filed Date: 7/28/23.

Accession Number: 20230728–5129.

Comment Date: 5 p.m. ET 8/18/23.

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, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: July 28, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–16558 Filed 8–2–23; 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 and Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–914–000.

Applicants: Sierrita Gas Pipeline LLC.

Description: § 4(d) Rate Filing: 2023 Jul Quarterly FL&U Filing to be effective 9/1/2023.

Filed Date: 7/27/23.

Accession Number: 20230727–5083.

Comment Date: 5 p.m. ET 8/8/23.

Docket Numbers: RP23–915–000.

Applicants: Big Sandy Pipeline, LLC.

Description: Compliance filing: Big Sandy Pipeline, LLC submits tariff filing per 154.203: Big Sandy Fuel Filing effective 9/1/2023 to be effective N/A.

Filed Date: 7/27/23.

Accession Number: 20230727–5108.

Comment Date: 5 p.m. ET 8/8/23.

Docket Numbers: RP23–916–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (SRP Sept-Oct 2023) to be effective 9/1/2023.

Filed Date: 7/27/23.

Accession Number: 20230727–5125.

Comment Date: 5 p.m. ET 8/8/23.

Docket Numbers: RP23–917–000.

Applicants: Viking Gas Transmission Company.

Description: § 4(d) Rate Filing: 2023 NGA Section 4 Rate Case to be effective 9/1/2023.

Filed Date: 7/28/23.

Accession Number: 20230728–5001.

Comment Date: 5 p.m. ET 8/9/23.

Docket Numbers: RP23–918–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: § 4(d) Rate Filing: Amend NRAs—FPL & TECO to be effective 8/1/2023.

Filed Date: 7/28/23.

Accession Number: 20230728–5012.

Comment Date: 5 p.m. ET 8/9/23.

Docket Numbers: RP23–919–000.

Applicants: Ruby Pipeline, L.L.C.

Description: § 4(d) Rate Filing: RP 2023–07–28 Negotiated Rate Agreement to be effective 9/1/2023.

Filed Date: 7/28/23.

Accession Number: 20230728–5026.

Comment Date: 5 p.m. ET 8/9/23.

Docket Numbers: RP23–920–000.

Applicants: Enable Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Amended NRA Filing—SWN Energy Services to be effective 8/1/2023.

Filed Date: 7/28/23.

Accession Number: 20230728–5052.

Comment Date: 5 p.m. ET 8/9/23.

Docket Numbers: RP23–921–000.

Applicants: Enable Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Cancel SWN Energy Agreements to be effective 8/1/2023.

Filed Date: 7/28/23.

Accession Number: 20230728–5055.

Comment Date: 5 p.m. ET 8/9/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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.

For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: July 28, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–16561 Filed 8–2–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2023–0309; FRL–9347–05–OCSPP]

Letter Peer Review; White Paper: Quantitative Human Health Approach To Be Applied in the Risk Evaluation for Asbestos Part 2; Notice of Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of and soliciting public comment on the document entitled: ''White Paper: Quantitative Human Health Approach to be Applied in the Risk Evaluation for Asbestos Part 2—Supplemental Evaluation including Legacy Uses and Associated Disposals of Asbestos'' and related charge questions. EPA will be soliciting comments from expert *ad hoc* reviewers on the quantitative approach described in this white paper. The white paper describes the systematic review considerations and criteria for identifying studies for dose-response analysis; includes an evaluation and comparison of existing cancer IURs and the non-cancer point of departure (POD) with the results of the new systematic review; and a proposal for a cancer IUR and non-cancer POD for use in the Part 2 risk evaluation for asbestos. In addition to the final charge questions and white paper, public comments received by the date specified in this document will be provided to the peer reviewers for consideration. The letter peer review is expected to begin October 25, 2023, and end November 24, 2023. Feedback from the letter peer review will be considered by EPA in the development of the Part 2 risk evaluation for asbestos, a draft of which will be released subsequently, along with a separate response document.

DATES: Comments must be received on or before October 2, 2023.

ADDRESSES: Submit written comments, identified by docket identification (ID) number EPA–HQ–OPPT–2023–0309, through *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional information on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Contact the Peer Review Leader (PRL), Tamue Gibson, Mission Support Division, Office of Program Support, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency; telephone number: (202) 564–7642 or call the main office number:(202) 564–8450; email address: *gibson.tamue@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What action is the Agency taking?

EPA is announcing the availability of and soliciting public comment on the document entitled: ''Quantitative Approach to the Human Health Assessment for the Risk Evaluation for Asbestos Part 2: Supplemental Evaluation including Legacy Uses and Associated Disposals of Asbestos.''

B. What is the Agency's authority for taking this action?

Section 6(b) of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2605(b)), requires that EPA conduct risk evaluations on existing chemical substances and identifies the minimum components EPA must include in all chemical substance risk evaluations. The risk evaluation must not consider costs or other non-risk factors (15 U.S.C. 2605(b)(4)(F)(iii)). The specific risk evaluation process is set out in 40 CFR part 702 and summarized on EPA's website at *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluations-existing-chemicals-under-tsca.*

C. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to those involved in the manufacture, processing, distribution, and disposal of chemical substances and mixtures, and/or those interested in the assessment of risks involving chemical substances regulated under TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

D. What should I consider as I submit my comments to EPA?

1. *Submitting Confidential Business Information (CBI).*

Do not submit CBI or other sensitive information to EPA through *https://www.regulations.gov* or email. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the PRL listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting that information.

2. *Tips for preparing comments.*

When preparing and submitting your comments, see Tips for Effective Comments at *https://www.epa.gov/dockets.*

II. Request for Comment

EPA is seeking public comment on both the white paper and the draft charge questions for the letter peer review. Both documents are available in EPA Docket ID No. EPA–HQ–OPPT–2023–0309 at *https://www.regulations.gov* and may also be accessed through EPA's website at *https://www.epa.gov/tsca-peer-review.* As additional background materials become available, EPA will include those additional background documents (*e.g.,* reviewers participating in this letter peer review) in the docket and on the website.

III. Letter Peer Review

A. What is the purpose of this Letter Peer Review?

The focus of this Letter Peer Review is to review the quantitative approach to assessing cancer and non-cancer human health hazards. Feedback from this review will be considered in the development of Part 2 of the risk evaluation for asbestos.

B. Why did EPA develop these documents?

Asbestos was identified as one of the first 10 chemicals for risk evaluation

under TSCA in December 2016. For the purposes of the risk evaluation for asbestos under TSCA section 6(a), EPA initially adopted the TSCA Title II (added to TSCA in 1986), section 202 definition; which is ''asbestiform varieties of six fiber types—chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite or actinolite.'' The latter five fiber types are amphibole varieties. EPA initially focused its risk evaluation on chrysotile asbestos, as described in the Problem Formulation for the Risk Evaluation for Asbestos, as this is the only fiber type with ongoing use, meaning current manufacture, processing, or distribution in commerce. Following release of the decision to exclude legacy uses from the risk evaluation, EPA was legally challenged by Safer Chemicals, Healthy Families, and in late 2019, the court in Safer Chemicals, Healthy Families v. EPA, 943 F.3d 397 (9th Cir. 2019) held that EPA's Risk Evaluation Rule (82 FR 33726, July 20, 2017 (FRL–9964–38)), should not have excluded ''legacy uses'' (*i.e.,* uses without ongoing or prospective manufacturing, processing, or distribution) or ''associated disposals'' (*i.e.,* future disposal of legacy uses) from the definition of conditions of use, although the court upheld EPA's exclusion of ''legacy disposals'' (*i.e.,* past disposal). Due to the court ruling, in the March 2020 Draft Risk Evaluation for Asbestos, EPA had signaled the inclusion of other fiber types, in addition to chrysotile, as well as consideration of legacy uses and associated disposal for the asbestos risk evaluation in a supplemental scope document and supplemental risk evaluation when these activities are known, intended, or reasonably foreseen. This was supported by both public comment and the Science Advisory Committee on Chemicals (SACC) during the SACC Peer Review meeting on June 8–11, 2020. The Risk Evaluation for Asbestos Part 1: Chrysotile Asbestos was finalized in December 2020 and specified a Part 2 scope document and risk evaluation would be forthcoming. The Final Scope of the Risk Evaluation for Asbestos Part 2: Supplemental Evaluation Including Legacy Uses and Associated Disposals of Asbestos took into consideration public comment and was released in June 2022.

In the final scope document for the Part 2 Risk Evaluation, EPA articulated the plan for the human health analysis to continue to focus on epidemiologic studies, given the robust evidence base and decades worth of evidence examining the relationship between exposure to asbestos and health effects. However, unlike the analysis in Part 1 that was focused on inhalation exposures and cancer, the analysis for human health in Part 2 also considers non-cancer effects and other routes of exposure. EPA has applied systematic review approach methods, as described in the Final Scope of the Risk Evaluation for Asbestos Part 2: Supplemental Evaluation Including Legacy Uses and Associated Disposals of Asbestos and the Draft Systematic Review Protocol Supporting TSCA Risk Evaluations for Chemical Substances to identify the reasonably available information to be considered in the Part 2 Risk Evaluation. EPA has continued to screen and evaluate the epidemiologic evidence following the finalization of the final scope document in order to determine the specific technical and quantitative analyses that may be warranted.

As anticipated, numerous epidemiology studies were identified, particularly for inhalation exposures with more limited information for oral and dermal exposure routes, examining asbestos and cancer and non-cancer effects. Because the human health hazards are well-established, it was recognized that streamlined identification of epidemiology studies that could inform dose-response would be both efficient and scientifically appropriate. Thus, EPA employed a fit-for-purpose objective and transparent approach to efficiently identify and evaluate the relevant information. In addition, EPA considered the reasonably available information in the context of the existing EPA assessments and the quantitative risk values those assessments established. Specifically, EPA considered the Risk Evaluation for Asbestos Part 1: Chrysotile Asbestos (2020) and a chrysotile-specific inhalation unit risk (IUR) of 0.16 per fiber/cubic centimeter (cc), the Integrated Risk information System (IRIS) Libby Amphibole Assessment (2017) and a Libby amphibole-specific IUR of 0.17 per fiber/cc and (Reference Concentration (RfC) for Inhalation Exposure of 9x10–5 milligram per cubic meter (mg/m3), and the IRIS Asbestos Assessment (1988) and a mixed-fiber IUR of 0.23 per fiber/milliliter (mL)). Based on evaluation and consideration of the totality of the information, EPA has developed a quantitative approach to assessing cancer and non-cancer human health hazards for Part 2 of the Risk Evaluation for Asbestos.

EPA is soliciting comments through letter peer review on the quantitative approach employed to identify the dose-response relevant information, the evaluation of the epidemiologic cohorts and data for dose-response assessment, analysis of the existing IURs and RfC and their potential suitability for application in the Part 2 Risk Evaluation, and the selection of an IUR and point of departure. EPA has prepared these technical details in the document entitled: ''White Paper: Quantitative Human Health Approach to be Applied in the Risk Evaluation for Asbestos Part 2—Supplemental Evaluation including Legacy Uses and Associated Disposals of Asbestos, which will be distributed for a letter peer-review that is expected to begin October 25, 2023, and end November 24, 2023. Feedback from the letter peer review will be considered by EPA in the development of the Part 2 risk evaluation for asbestos, a draft of which will be released subsequently, along with a separate response document.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: July 27, 2023.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2023–16455 Filed 8–2–23; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA–R03–OAR–2023–0302; FRL–11045–01–R3]

Adequacy Status of Motor Vehicle Emissions Budgets for the Baltimore 2015 8-Hour Ozone Moderate Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, the Environmental Protection Agency (EPA) is notifying the public that it has found that the 2023 motor vehicle emissions budgets (MVEBs) for volatile organic compounds (VOCs) and nitrogen oxides (NO_X), submitted by the Maryland Department of the Environment (MDE) on March 7, 2023, for the 2015 8-hour ozone national ambient air quality standard (NAAQS), are adequate for transportation conformity purposes for the Baltimore 2015 8-hour ozone moderate nonattainment area. As a result of EPA's finding, the State of Maryland must use the MVEBs from the March 7, 2023, attainment demonstration for future conformity determinations for the 2015 8-hour ozone standard.

DATES: The motor vehicle budgets are effective August 18, 2023.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2036. Mr. Becoat can also be reached via electronic mail at *becoat.gregory@epa.gov.*

ADDRESSES: Publicly available docket materials, identified by EPA–R03–OAR–2023–0302, are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday through Friday (except Federal Holidays). For further information on the EPA Docket Center services and the current status, see *www.epa.gov/dockets.* You may access this **Federal Register** document electronically from *www.federalregister.gov/documents/current.* This finding will also be available at the EPA's conformity website: *www.epa.gov/state-and-local-transportation/conformity-adequacy-review-region-3.*

SUPPLEMENTARY INFORMATION: This notice is an announcement of a finding that EPA has already made. EPA Region 3 sent a letter to MDE on June 1, 2023, stating that the 2023 MVEBs are adequate for transportation conformity purposes. The transportation conformity rule requires that EPA conduct a public process and make an affirmative decision on the adequacy of these budgets before they can be used by metropolitan planning organizations (MPO) in transportation conformity determinations.

As a result of this finding, upon the effective date of this notice of adequacy, the MPO must use the MVEBs associated with the attainment demonstration for future transportation conformity determinations. EPA announced availability of the attainment demonstration and related MVEBs on the EPA's transportation conformity website on April 3, 2023, requesting comments by May 3, 2023. EPA received no comments in response to the adequacy review posting. The MVEBs are provided in Table 1 in this document.

TABLE 1—2023 MOTOR VEHICLE EMISSION BUDGETS FOR THE BALTIMORE AREA ATTAINMENT DEMONSTRATION

Pollutant	Mobile source emission budget (tons per day)
VOC	17.47
NO_X	35.26

Transportation conformity is required by Clean Air Act section 176(c), 42 U.S.C. 7506(c). EPA's conformity rule requires that long-range transportation plans, transportation improvement programs, and transportation projects conform to a state's air quality SIP and establishes the criteria and procedures for determining whether or not they conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. See id. at section 7506(c)(1)(B).

The criteria EPA uses to determine whether a SIP's MVEBs are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). EPA has described the process for determining the adequacy of submitted SIP budgets in 40 CFR 93.118(f). Under 40 CFR 93.104(e), within 2 years of the effective date of this notice, the MPO and the U.S. Department of Transportation will need to demonstrate conformity to the MVEBs. To do so, the on-road motor vehicle emissions from implementation of the long-range transportation plan should be projected consistently with the MVEBs. Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if EPA finds the MVEBs adequate, the Agency may later determine that the SIP itself is not approvable.

Authority: 42 U.S.C. 7401–7671q.

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2023–16587 Filed 8–2–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 159999]

Open Commission Meeting Thursday, August 3, 2023

July 27, 2023.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, July 20, 2023, which is scheduled to commence at 10:30 a.m. in the Commission Meeting Room of the Federal Communications Commission, 45 L Street NE, Washington, DC.

While attendance at the Open Meeting is available to the public, the FCC headquarters building is not open access and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees at the Open Meeting will not be required to have an appointment but must otherwise comply with protocols outlined at: *www.fcc.gov/visit.* Open Meetings are streamed live at: *www.fcc.gov/live* and on the FCC's YouTube channel.

Item No.	Bureau	Subject
1	Wireless Telecommunications	*Title:* Advancing Understanding of Non-Federal Spectrum Usage (WT Docket No. 23–232). *Summary:* The Commission will consider a Notice of Inquiry that would initiate a technical inquiry into how to obtain more sophisticated knowledge of real-time non-Federal spectrum usage—and how the Commission could take advantage of modern capabilities for doing so in a cost-effective, accurate, scalable, and actionable manner. The Notice of Inquiry would explore the potential to advance the Commission's understanding of commercial spectrum usage by leveraging new data sources, methods, and technologies such as artificial intelligence and machine learning in an increasingly congested radiofrequency environment.
2	Media	*Title:* Updating Digital FM Radio Service (MB Docket No. 22–405). *Summary:* The Commission will consider an Order and Notice of Proposed Rulemaking seeking comment on proposed changes to the methodology used to determine maximum power levels for digital FM broadcast stations and to the process for authorizing digital transmissions at different power levels on the upper and lower digital sidebands.

Item No.	Bureau	Subject
3	Wireline Competition	*Title:* Affordable Connectivity Program High-Cost Benefit (WC Docket No. 21–450). *Summary:* The Commission will consider a Sixth Report and Order which would implement the Affordable Connectivity Program (ACP) high-cost area benefit, providing a discount of up to $75 per month for broadband services provided in qualifying high-cost areas, by participating ACP providers.
4	Enforcement	*Title:* Enforcement Bureau Action. *Summary:* The Commission will consider an enforcement action.

* * * * *

The meeting will be webcast at: *www.fcc.gov/live.* Open captioning will be provided as well as a text only version on the FCC website. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

Press Access—Members of the news media are welcome to attend the meeting and will be provided reserved seating on a first-come, first-served basis. Following the meeting, the Chairwoman may hold a news conference in which she will take questions from credentialed members of the press in attendance. Also, senior policy and legal staff will be made available to the press in attendance for questions related to the items on the meeting agenda. Commissioners may also choose to hold press conferences. Press may also direct questions to the Office of Media Relations (OMR): *MediaRelations@fcc.gov.* Questions about credentialing should be directed to OMR.

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–16497 Filed 8–2–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0430; FR ID 158590]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before October 2, 2023. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

OMB Control Number: 3060–0430.

Title: Section 1.1206, Permit-but-Disclose Proceedings.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; and State, local, or tribal governments.

Number of Respondent and Responses: 11,500 respondents; 34,500 responses.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain benefits. Statutory authority for this collection of information is contained in sections 4(i) and (j), 303(r), and 409 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j), 303(r), and 409.

Estimated Time per Response: 0.75 hours (45 minutes).

Total Annual Burden: 25,875 hours.

Total Annual Cost: No cost.

Needs and Uses: The Commission's rules, under 47 CFR 1.1206, require that a public record be made of ex parte presentations (*i.e.,* written presentations not served on all parties to the proceeding or oral presentations as to which all parties have not been given notice and an opportunity to be present) to decision-making personnel in ''permit-but-disclose'' proceedings, such as notice-and-comment rulemakings and declaratory ruling proceedings.

On February 2, 2011, the FCC released a Report and Order and Further Notice of Proposed Rulemaking, GC Docket Number 10–43, FCC 11–11, which amended and reformed the Commission's rules on ex parte presentations (47 CFR 1.1206(b)(2)) made in the course of Commission rulemakings and other permit-but-disclose proceedings. The modifications to the existing rules adopted in this

Report and Order require that parties file more descriptive summaries of their ex parte contacts, by ensuring that other parties and the public have an adequate opportunity to review and respond to information submitted ex parte, and by improving the FCC's oversight and enforcement of the ex parte rules. The modified ex parte rules which contain information collection requirements which OMB approved on December 6, 2011, are as follows: (1) Ex parte notices will be required for all oral ex parte presentations in permit-but-disclose proceedings, not just for those presentations that involve new information or arguments not already in the record; (2) If an oral ex parte presentation is limited to material already in the written record, the notice must contain either a succinct summary of the matters discussed or a citation to the page or paragraph number in the party's written submission(s) where the matters discussed can be found; (3) Notices for all ex parte presentations must include the name of the person(s) who made the ex parte presentation as well as a list of all persons attending or otherwise participating in the meeting at which the presentation was made; (4) Notices of ex parte presentations made outside the Sunshine period must be filed within two business days of the presentation; (5) The Sunshine period will begin on the day (including business days, weekends, and holidays) after issuance of the Sunshine notice, rather than when the Sunshine Agenda is issued (as the current rules provide); (6) If an ex parte presentation is made on the day the Sunshine notice is released, an ex parte notice must be submitted by the next business day, and any reply would be due by the following business day. If a permissible ex parte presentation is made during the Sunshine period (under an exception to the Sunshine period prohibition), the ex parte notice is due by the end of the same day on which the presentation was made, and any reply would need to be filed by the next business day. Any reply must be in writing and limited to the issues raised in the ex parte notice to which the reply is directed; (7) Commissioners and agency staff may continue to request ex parte presentations during the Sunshine period, but these presentations should be limited to the specific information required by the Commission; (8) Ex parte notices must be submitted electronically in machine-readable format. PDF images created by scanning a paper document may not be submitted, except in cases in which a word-processing version of the document is not available. Confidential information may continue to be submitted by paper filing, but a redacted version must be filed electronically at the same time the paper filing is submitted. An exception to the electronic filing requirement will be made in cases in which the filing party claims hardship. The basis for the hardship claim must be substantiated in the ex parte filing; (9) To facilitate stricter enforcement of the ex parte rules, the Enforcement Bureau is authorized to levy forfeitures for ex parte rule violations; (10) Copies of electronically filed ex parte notices must also be sent electronically to all staff and Commissioners present at the ex parte meeting so as to enable them to review the notices for accuracy and completeness. Filers may be asked to submit corrections or further information as necessary for compliance with the rules; and (11) Parties making permissible ex parte presentations in restricted proceedings must conform and clarify rule changes when filing an ex parte notice with the Commission.

The information is used by parties to permit-but-disclose proceedings, including interested members of the public, to respond to the arguments made and data offered in the presentations. The responses may then be used by the Commission in its decision-making.

The availability of the ex parte materials ensures that the Commission's decisional processes are fair, impartial, and comport with the concept of due process in that all interested parties can know of and respond to the arguments made to the decision-making officials.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–16508 Filed 8–2–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1204; FR ID 158994]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before September 5, 2023.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce

paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1204.

Title: Deployment of Text-to-911.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, and State, Local, or Tribal government.

Number of Respondents and Responses: 4,106 respondents; 55,034 responses.

Estimated Time per Response: 1–8 hours.

Frequency of Response: One-time; annual reporting requirements and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections is contained in 47 U.S.C. 151, 152, 154(i), 154(j), 154(o), 251(e), 303(b), 303(g), 303(r), 316, and 403, and Section 4 of the Wireless Communications and Public Safety Act of 1999, Public Law 106–81, Sections 101 and 201 of the New and Emerging Technologies 911 Improvement Act of 2008, Public Law 110–283, and Section 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, as amended 47 U.S.C. 615a, 615a–1, 615b, 615c.

Total Annual Burden: 90,377 hours.

Total Annual Cost: No Cost.

Needs and Uses: Deployment of Text-to-911. In a Second Report and Order released on August 13, 2014, FCC 14–118, published at 79 FR 55367, September 16, 2014, the Commission adopted final rules—containing information collection requirements—to enable the Commission to implement text-to-911 service. The text-to-911 rules provide enhanced access to emergency services for people with disabilities and fulfilling a crucial role as an alternative means of emergency communication for the general public in situations where sending a text message to 911 as opposed to placing a voice call could be vital to the caller's safety. The Second Report and Order adopted rules to commence the implementation of text-to-911 service with an initial deadline of December 31, 2014 for all covered text providers to be capable of supporting text-to-911 service. The Second Report and Order also provided that covered text providers would then have a six-month implementation period. They must begin routing all 911 text messages to a Public Safety Answering Point (PSAP) by June 30, 2015 or within six months of a valid PSAP request for text-to-911 service, whichever is later. To implement these requirements, the Commission seeks to collect information primarily for a database in which PSAPs voluntarily register that they are technically ready to receive text messages to 911. As PSAPs become text-ready, they may either register in the PSAP database (or submit a notification to PS Docket Nos. 10–255 and 11–153), or provide other written notification reasonably acceptable to a covered text messaging provider. Either measure taken by the PSAP constitutes sufficient notification pursuant to the rules in the Second Report and Order. PSAPs and covered text providers may also agree to an alternative implementation timeframe (other than six months). Covered text providers must notify the FCC of the dates and terms of any such alternate timeframe within 30 days of the parties' agreement. Additionally, the rules adopted by the Second Report and Order include other information collections for third party notifications necessary for the implementation of text-to-911, including notifications to consumers, covered text providers, and the Commission. These notifications are essential to ensure that all affected parties are aware of the limitations, capabilities, and status of text-to-911 services. These information collections enable the Commission to meet the objectives for implementation of text-to-911 service and for compliance by covered text providers with the six-month implementation period in furtherance of the Commission's core mission to ensure the public's safety. These rules are codified at 47 CFR 9.10(q).

Real Time Text. In a Report and Order and Further Notice of Proposed Rulemaking, released on December 16, 2016, in CG Docket No. 16–145 and GN Docket No. 15–178, the Commission amended its rules to facilitate a transition from text telephone (TTY) technology to RTT as a reliable and interoperable universal text solution over wireless internet protocol (IP) enabled networks for people who are deaf, hard of hearing, deaf-blind, or have a speech disability. Section 9.10(c) of the rules requires Commercial Mobile Radio Service (CMRS) providers to be ''capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, *e.g.,* through the use of [TTY devices].'' Additionally, ''CMRS providers that provide voice communications over IP facilities are not required to support 911 access via TTYs if they provide 911 access via [RTT] communications, in accordance with 47 CFR part 67, except that RTT support is not required to the extent that it is not achievable for a particular manufacturer to support RTT on the provider's network.'' See 47 CFR 9.10(c). The Commission's Report and Order provides that once a PSAP is so capable, the requested service provider must begin delivering RTT communications in an RTT format within six months after a valid request is made—to the extent the provider has selected RTT as its accessible text communication method.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–16509 Filed 8–2–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1156; FR ID 158983]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the

following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before October 2, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

OMB Control No.: 3060–1156.

Title: 47 CFR 43.82, Annual International Circuit Capacity Reports.

Form No.: N/A.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit entities and State, Local or Tribal Governments.

Number of Respondents: 90 respondents; 213 responses.

Estimated Time per Response: 1–14 hours.

Frequency of Response: Annual reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. The Commission's statutory authority for this information collection under Sections 1, 4(i), 4(j), 11, 201–205, 214, 219–220, 303(r), 309, and 403 of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 161, 201–205, 214, 219–220, 303(r), 309, and 403, the Cable Landing License Act of 1921, 47 U.S.C. 34–39, and 3 U.S.C. 301.

Total Annual Burden: 1,368 hours.

Annual Cost Burden: $10,200.

Needs and Uses: The Federal Communications Commission (Commission) is requesting that the Office of Management and Budget (OMB) approve a three-year extension of the information collection, titled ''47 CFR 43.82, Annual International Circuit Capacity Reports.'' Pursuant to 47 CFR 43.82, cable landing licensees and entities holding capacity on submarine cables file electronically annual circuit capacity reports, in a format set out in a Filing Manual.

The information collection requirements contained in Section 43.82 reads as follows: (a) International submarine cable capacity. Not later than March 31 of each year:

(1) The licensee(s) of a submarine cable between the United States and any foreign point shall file a report showing the capacity of the submarine cable as of December 31 of the preceding calendar year. The licensee(s) shall also file a report showing the planned capacity of the submarine cable (the intended capacity of the submarine cable two years from December 31 of the preceding calendar year).

(2) Each cable landing licensee and common carrier shall file a report showing its capacity on submarine cables between the United States and any foreign point as of December 31 of the preceding calendar year.

Note to Paragraph (a): United States is defined in Section 3 of the Communications Act of 1934, as amended, 47 U.S.C. 153.

(b) Registration Form. A Registration Form, containing information about the filer, such as address, phone number, email address, etc., shall be filed with each report. The Registration Form shall include a certification enabling the filer to check a box to indicate that the filer requests that its circuit capacity data be treated as confidential consistent with Section 0.459(a)(4) of the Commission's rules.

(c) Filing Manual. Authority is delegated to the Chief of the International Bureau to prepare instructions and reporting requirements for the filing of these reports prepared and published as a Filing Manual. The information required under this Section shall be filed electronically in conformance with the instructions and reporting requirements in the Filing Manual.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–16512 Filed 8–2–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1202, OMB 3060–1279; FR ID 159845]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before October 2, 2023. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty

for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

OMB Control Number: 3060–1202.

Title: Improving 9–1–1 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies.

Form Number: Not Applicable (annual on-line certification).

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents and Responses: 300 respondents; 305 responses.

Estimated Time per Response: 562 hours (average). Varies by respondent.

Total Annual Burden: 168,651 hours.

Frequency of Response: Annual reporting requirement and recordkeeping requirement.

Obligation to Respond: Mandatory. The statutory authority for this collection of information is contained in sections 1, 4(i), 4(j), 4(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 615a–1, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j) & (o), 201(b), 214(d), 218, 251(e)(3),301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 615a–1, and 615c.

Total Annual Cost: No Cost.

Needs and Uses: This is a revision of a currently approved information collection necessary to ensure that all Americans have access to reliable and resilient 911 communications, particularly in times of emergency, by requiring certain 911 service providers to certify implementation of key best practices or reasonable alternative measures. The information will be collected in the form of an electronically-filed, annual certification from each covered 911 service provider, as described in the Commission's 2013 *Report and Order,* in which the provider will indicate whether it has implemented certain industry-backed best practices. Providers that are able to respond in the affirmative to all elements of the certification will be deemed to satisfy the ''reasonable measures'' requirement in Section 9.19(b) of the Commission's rules. If a provider does not certify in the affirmative with respect to one or more elements of the certification, it must provide a brief explanation of what alternative measures it has taken, in light of the provider's particular facts and circumstances, to ensure reliable 911 service with respect to that element(s). Similarly, a service provider may also respond by demonstrating that a particular certification element is not applicable to its networks and must include a brief explanation of why the element(s) does not apply. Providers are also required to notify the Commission in writing within 60 days of completely ceasing operations as a covered 911 service provider.

The information will be collected by the Public Safety and Homeland Security Bureau, FCC, for review and analysis, to verify that covered 911 service providers are taking reasonable measures to maintain reliable 911 service. In certain cases, based on the information included in the certifications and subsequent coordination with the provider, the Commission may require remedial action to correct vulnerabilities in a service provider's 911 network if it determines that (a) the service provider has not, in fact, adhered to the best practices incorporated in the FCC's rules, or (b) in the case of providers employing alternative measures, that those measures were not reasonably sufficient to mitigate the associated risks of failure in these key areas. The Commission delegated authority to the Bureau to review certification information and follow up with service providers as appropriate to address deficiencies revealed by the certification process.

The purpose of the collection of this information is to verify that covered 911 service providers are taking reasonable measures such that their networks comply with accepted best practices, and that, in the event they are not able to certify adherence to specific best practices, that they are taking reasonable alternative measures. The Commission adopted these rules in light of widespread 911 outages during the June 2012 derecho storm in the Midwest and Mid-Atlantic states, which revealed that multiple service providers did not take adequate precautions to maintain reliable service.

OMB Control Number: 3060–1279.

Title: Connect America Fund—Eligible Locations Adjustment Process (ELAP).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, individuals or households, and state, local or tribal governments.

Number of Respondents and Responses: 296 respondents; 962 responses.

Estimated Time per Response: 2–40 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 254.

Total Annual Burden: 10,804 hours.

Total Annual Cost: No Cost.

Needs and Uses: This information collection addresses the requirements of a process (the eligible locations adjustment process (ELAP)) that the Commission used to facilitate the post-auction review of certain CAF Phase II Auction support recipients' defined deployment obligations (and associated support), on a state-by-state basis, in situations where the number of eligible locations within a state is less than the number of funded locations. *Connect America Fund,* WC Docket No. 10–90, Order, DA 23–117 (WCB 2023); *Connect America Fund,* WC Docket Nos. 10–90 et al., Order on Reconsideration, 33 FCC Rcd 1380, 1390–92, paras. 23–28 (2018) (*Phase II Auction Reconsideration Order*); *Connect America Fund,* WC Docket No. 10–90, Order, 34 FCC Rcd 10395 (WCB 2019) (adopting rules and requirements necessary to implement this process, consistent with the parameters set forth in the *Phase II Auction Reconsideration Order* and prior Commission guidance for adjusting defined deployment obligations) (*ELAP Order*). CAF Phase II Auction support recipients' participation in this process was voluntary.

ELAP required the one-time collection of location information for eligible locations within the state where the participant sought an adjustment to its defined deployment obligation. Eligible locations included both locations that qualify for support (qualifying locations), which the ELAP participant was required to report, and any additional location(s) (prospective location(s)) within eligible areas of the state that the participant wanted to reserve as part of its defined deployment obligation. The total number of eligible locations reported by the participant could not exceed the participant's defined deployment obligation for the state.

In addition, ELAP participants had to submit a description of the method(s) used to identify all qualifying locations, as well as some supporting evidence, such as copies of public records, aerial photography, location information for non-eligible locations, or similar evidence. Participants had to certify the truth and accuracy of this information.

The Bureau announced which participants had met their prima facie evidentiary standard, and the Universal

Service Administrative Company (USAC) used certain location information (address, geocoordinates, number of units) filed by these participants to populate a publicly available map (public ELAP Map), which was removed from public inspection at the conclusion of the ELAP process. *WCB Announces CAF Phase II Support Recipients Meeting Standards for Continuing with the Eligible Locations Adjustment Process; the Opening of the Stakeholder Registration Period; Extension of Deadline for Stakeholders to File Challenges; Identification of Potentially Affected Tribal Authorities,* WC Docket No. 10–90, Public Notice, 36 FCC Rcd 16493, 16494 (WCB 2021).

Other interested parties deemed eligible to participate in ELAP (stakeholders) had the opportunity to challenge the accuracy and completeness of any relevant participant's eligible location information, although none did. To file such a challenge, stakeholders were required to submit alternative location information (of the same kind and in the same format as required of the participant), a brief description of the methods used to identify the location as an eligible location, and supporting evidence. Parties eligible to participate as stakeholders included government entities (state, local, and Tribal) as well as individuals or non-governmental entities with a legitimate and verifiable interest in ensuring broadband service in the relevant areas but excluded any entity or individual with a controlling interest in a competitor of the participant(s) being challenged.

The Bureau committed to using a third-party commercial verifier to confirm the eligibility of any stakeholder who challenged a participant's location information. The Bureau required certification that the stakeholder (exclusive of governmental entities) did not hold a controlling interest in a direct competitor of the relevant participant. The Bureau also separately gathered certain limited information about these stakeholders (*e.g.,* name and contact information).

All ELAP information was filed and is maintained in a new module within the High-Cost Universal Service Broadband Portal (HUBB) (OMB Control No. 3060–1228). The module had integrated instructions and guidance for submitting information. This module incorporated several features similar to those associated with the reporting of deployed location information in the HUBB. For example, the module had an automated validation system that generated error messages when the location information submitted by ELAP parties failed to meet reporting parameters (such as redundancies, required file type) as specified in the *ELAP Order.* The module also generated notices where correction, supplementation, or redaction of information is necessary. Participants and stakeholders could pre-file information and correct, update, add, or delete information prior to their respective filing deadline.

Unlike deployed location information collected pursuant to OMB Control No. 3060–1228, all ELAP information, including the description of methods and supporting documentation as well as location data, except the location data published in the public ELAP Map, has been and will continue to be treated as presumptively confidential.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–16590 Filed 8–2–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1003; FR ID 159727]

Information Collection Requirement Being Submitted to the Office of Management and Budget for Emergency Review and Approval

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before September 5, 2023.

ADDRESSES: Comments should be sent to *http://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Commission invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission is requesting emergency OMB processing of the information collection requirement(s) contained in this notice and has requested OMB approval no later than 32 days after the collection is received at OMB. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of Commission ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the Commission's submission to OMB will be displayed.

OMB Control Number: 3060–1003.

Title: Communications Disaster Information Reporting System (DIRS).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents and Responses: 400 respondents, 104,000 responses.

Estimated Time per Response: 1 hour–1.5 hours (average per response).

Frequency of Response: On occasion and Annual Reporting Requirements and Recordkeeping Requirements.

Obligation to Respond: Voluntary. Statutory authority for this collection is contained in sections 1, 4(i), 4(j), 4(o), 251(e)(3), 254, 301, 303(b), 303(g), 303(r), 307, 309(a), 309(j), 316, 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 154(i)–(j) & (o), 251(e)(3), 254, 301, 303(b), 303(g), 303(r), 332, 403, and 1302.

Total Annual Burden: 16,320 hours.

Total Annual Cost: No Cost.

Needs and Uses: The Commission launched the Disaster Information Reporting System (DIRS) in 2007 pursuant to its mandate to promote the safety of life and property through the use of wire and radio communication as required by the Communications Act of 1934, as amended. DIRS is a voluntary, efficient, and web-based system that communications companies may use to report their infrastructure status during times of crisis (*e.g.,* related to a disaster). DIRS uses a number of template forms tailored to different communications sectors (*i.e.,* wireless, wireline, broadcast, and cable) to facilitate the entry of this information. To use DIRS, a company first inputs its emergency contact information. After this, they submit information using the template form appropriate for their communications sector. In a *Second Report and Order* adopted on March 18, 2021, as FCC 21–34, the Commission adopted rules allowing certain federal, state, and Tribal Nation agencies (Participating Agencies) to access to certain geographically relevant reports filed in the Commission's Disaster Information Reporting System (DIRS). The information collections and record keeping provisions adopted will allow Participating Agencies to apply for, and receive access to, DIRS report in the areas where they have jurisdiction. The collection will further enable these Participating Agencies, at their election, to share DIRS reports with qualified local agencies whose jurisdiction is affected by a disaster, while still maintaining the confidentiality of the substantive data. The changes to the data collections fields in the DIRS filings made by service providers will further facilitate the ability of Participating Agencies to access those reports relevant to their specific geographies. Finally, the changes to the information collection and associated recordkeeping requirements, including retention by participating agencies of qualification forms submitted by local agency seeking access to DIRS data, as well as a list of which local agencies receive information from the Participating Agency, training materials setting clear parameters for the use of DIRS data, and a list of those persons granted DIRS account access, will enable auditing functions to ensure accountability in the use of DIRS information and immediate reporting of breaches of access or confidentiality protocols.

The Commission notes that the information sharing framework established in the Second Report and Order allows for access to be granted not only for DIRS, but also to the Commission's Network Outage Reporting System (NORS). We note that the process and requirements for Participating Agencies under this framework is identical, regardless of whether they seek access to NORS, DIRS, or both. Because the Commission anticipates that NORS and DIRS access will be requested together in most cases, it believes that the estimated burden hours and costs for Participating Agencies associated with DIRS access are fully included in the estimates that it has separately submitted as part of its collection on Part 4 of the Commission's Rules Concerning Disruptions to Communications, OMB Control No. 3060–0484. To avoid double-counting the estimated burden hours and costs associated with both collections, the Commission estimates the marginal cost of the Participating Agency aspect of this collection to be zero.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–16511 Filed 8–2–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1124; FR ID 159137]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before September 5, 2023.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control No.: 3060–1124.

Title: 80.231, Technical Requirements for Class B Automatic Identification System (AIS) Equipment.

Form No.: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 20 respondents; 50,020 responses.

Estimated Time per Response: 1 hour per requirement.

Frequency of Response: On occasion reporting requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154, 303, 307(e), 309 and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 50,020 hours.

Annual Cost Burden: $25,000.

Needs and Uses: On September 19, 2008, the Commission adopted a Second Report and Order, FCC 08–208, which added a new section 80.231, which requires that manufacturers of Class B Automatic Identification Systems (AIS) transmitters for the Marine Radio Service include with each transmitting device a statement explaining how to enter static information accurately and a warning statement that entering inaccurate information is prohibited. The Commission is seeking to extend this collection in order to obtain the full three-year clearance from OMB. Specifically, the information collection requires that manufacturers of AIS transmitters label each transmitting device with the following statement: WARNING: It is a violation of the rules of the Federal Communications Commission to input an MMSI that has not been properly assigned to the end user, or to otherwise input any inaccurate data in this device. Additionally, prior to submitting a certification application (FCC Form 731, OMB Control Number 3060–0057) for a Class B AIS device, the following information must be submitted in duplicate to the Commandant (CG–521), U.S. Coast Guard, 2100 2nd Street SW, Washington, DC 20593–0001: (1) The name of the manufacturer or grantee and the model number of the AIS device; and (2) copies of the test report and test data obtained from the test facility showing that the device complies with the environmental and operational requirements identified in IEC 62287–1. After reviewing the information described in the certification application, the U.S. Coast Guard will issue a letter stating whether the AIS device satisfies all of the requirements specified in IEC 62287–1. A certification application for an AIS device submitted to the Commission must contain a copy of the U.S. Coast Guard letter stating that the device satisfies all of the requirements specified in IEC–62287–1, a copy of the technical test data and the instruction manual(s).

These reporting and third-party disclosure requirements aid the Commission monitoring advance marine vessel tracking and navigation information transmitted from Class B AIS devices to ensure that they are accurate and reliable, while promoting marine safety.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–16513 Filed 8–2–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Tuesday, August 8, 2023 at 10:30 a.m. and its continuation at the conclusion of the open meeting on August 10, 2023.

PLACE: 1050 First Street NE, Washington, DC and virtual. (This meeting will be a hybrid meeting.)

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Compliance matters pursuant to 52 U.S.C. 30109.

Matters relating to internal personnel decisions, or internal rules and practices.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Vicktoria J. Allen,

Deputy Secretary of the Commission.

[FR Doc. 2023–16692 Filed 8–1–23; 4:15 pm]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10003]

Agency Information Collection Activities: Submission for OMB Review; 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 (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 a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate 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 on the collection(s) of information must be received by the OMB desk officer by September 5, 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.

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 Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. 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 (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-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 that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title:* Notice of Denial of Medical Coverage (or Payment); *Use:* Section 1852(g)(1)(B) of the Social Security Act (the Act) requires Medicare health plans to provide enrollees with a written notice in understandable language of the reasons for the denial and a description of the applicable appeals processes.

Medicare health plans, including Medicare Advantage plans, cost plans, and Health Care Prepayment Plans (HCPPs), are required to issue the Notice of Denial of Medical Coverage (or Payment) (NDMCP) when a request for either a medical service or payment is denied, in whole or in part. Additionally, the notices inform Medicare enrollees of their right to file an appeal, outlining the steps and timeframes for filing. All Medicare health plans are required to use these standardized notices. *Form Number:* CMS–10003 (OMB Control Number: 0938–0829); *Frequency:* Annually; *Affected Public:* Private Sector, Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 937; *Number of Responses:* 16,191,812; *Total Annual Hours:* 2,697,556. (For policy questions regarding this collection contact Sabrina Edmonston at 410–786–3209.)

Dated: July 31, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–16545 Filed 8–2–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10146]

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 October 2, 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–10146 Notice of Denial of Medicare Prescription Drug Coverage

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:* Extension of a currently approved collection; *Title of Information Collection:* Notice of Denial of Medicare Prescription Drug Coverage; *Use:* Part D plan sponsors are required to issue the Notice of Denial of Medicare Prescription Drug Coverage notice when a request for a prescription drug or payment is denied, in whole or in part. The written notice must include a statement, in understandable language, the reasons for the denial and a description of the appeals process.

The purpose of this notice is to provide information to enrollees when prescription drug coverage has been denied, in whole or in part, by their Part D plans. The notice must be readable, understandable, and state the specific reasons for the denial. The notice must also remind enrollees about their rights and protections related to requests for prescription drug coverage and include an explanation of both the standard and expedited redetermination processes and the rest of the appeal process. *Form Number:* CMS–10146 (OMB control number 0938–0976); *Frequency:* Daily; *Affected Public:* Private sector (Business or other for-profits); *Number of Respondents:* 743; *Total Annual Responses:* 2,631,728; *Total Annual Hours:* 657,932. (For policy questions regarding this collection contact: Coretta Edmondson at 410–786–0512.)

Dated: July 31, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–16549 Filed 8–2–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget Review; Objective Work Plan/On-Going Progress Report (Office of Management and Budget #0970–0452)

AGENCY: Administration for Native Americans, Administration for Children and Families, United States Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families' (ACF) Administration for Native Americans (ANA) is requesting a 3-year extension to the Ongoing Progress Report (OPR) and the Objective Work Plan (OWP) (Office of Management and Budget (OMB) #0970–0452, expiration September 30, 2023). There are no changes requested to the forms.

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: There are no changes proposed to the OPR or OWP.

The OPR information collection is conducted in accordance with section 811 [42 U.S.C. 2992] of the Native American Programs Act and will allow ANA to report quantifiable results across all program areas. It also provides grantees with parameters for reporting their progress and helps ANA better monitor and determine the effectiveness of their projects. The information in the OPR is collected on a semi-annual basis to monitor the performance of grantees and better gauge grantee progress.

The OWP information collection is conducted in accordance with 42 U.S.C. of the Native American Programs Act of 1972, as amended. This collection is necessary to evaluate applications for financial assistance and determine the relative merits of the projects for which such assistance is requested, as set forth in section 806 [42 U.S.C. 2991-d 1](a)(1). The information in the OWP is collected at time of application to detail the project goal, objectives, activities and outputs.

Respondents: Federally and state recognized tribes, Native Pacific Islanders, tribal Colleges and Universities, Native non-profits, and consortia.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Objective work plan	300	1	3	900	300
On-Going Progress Report	200	2	1	400	133

Estimated Total Annual Burden Hours: 433.

Authority: Section 806 [42 U.S.C. 2991d–1](a)(1) and sec. 811 [42 U.S.C. 2992].

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–16588 Filed 8–2–23; 8:45 am]

BILLING CODE 4184–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–1635]

Prescription Drug User Fee Act Waivers, Reductions, and Refunds for Fixed-Combinations and Single-Entity Versions of Previously Approved Antiretrovirals Under the President's Emergency Plan for Acquired Immunodeficiency Syndrome Relief; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''PDUFA Waivers, Reductions, and Refunds for Fixed-Combinations and Single-Entity Versions of Previously Approved Antiretrovirals under PEPFAR.'' The draft guidance describes circumstances under which an applicant may be eligible for a barrier-to-innovation waiver under the Prescription Drug User Fee Act (PDUFA) for certain new drug applications (NDAs) for single-entity (SE) antiretroviral (ARV) and fixed-combination (FC) ARV drug products for the treatment or prevention of human immunodeficiency virus-one (HIV–1). The draft guidance is also intended to help applicants request a barrier-to-innovation waiver under those circumstances.

DATES: Submit either electronic or written comments on the draft guidance by October 2, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–1635 for ''PDUFA Waivers, Reductions, and Refunds for Fixed-Combinations and Single-Entity Versions of Previously Approved Antiretrovirals under PEPFAR.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Sophia Park, Division of User Fee Management, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–7900, *CDERCollections@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''PDUFA Waivers, Reductions, and Refunds for Fixed-Combinations and Single-Entity Versions of Previously Approved Antiretrovirals under PEPFAR.'' This draft guidance is proposed as a revision of the guidance for industry entitled ''User Fee Waivers for FDC and Co-Packaged HIV Drugs for PEPFAR,'' issued February 2007. The draft guidance describes circumstances under which an applicant may be eligible for a barrier-to-innovation waiver under PDUFA for certain NDAs for SE ARV and FC ARV drug products for the treatment of HIV–1. When final, this guidance will supersede the guidance for industry entitled ''User Fee Waivers for FDC and Co-Packaged HIV Drugs for PEPFAR,'' issued February 2007.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''PDUFA Waivers, Reductions, and Refunds for Fixed-Combinations and Single-Entity Versions of Previously Approved Antiretrovirals under PEPFAR.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in FDA's guidance entitled ''Prescription Drug User Fee Act Waivers, Reductions, and Refunds for Drug and Biological Products'' associated with requesting waivers of user fees (including PEPFAR waivers) has been approved under OMB control number 0910–0693. The collection of information in completing and submitting FDA Form FDA 3397 (Prescription Drug User Fee Coversheet) has been approved under OMB control number 0910–0297. The collection of information in 21 CFR part 314 for submission of a new drug application has been approved under OMB control number 0910–0001.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: July 31, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–16560 Filed 8–2–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0001]

Mitigating Clinical Study Disruptions During Disasters and Public Health Emergencies; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing a public meeting entitled ''Mitigating Clinical Study Disruptions During Disasters and Public Health Emergencies.'' This public meeting will satisfy the mandate of the Food and Drug Omnibus Reform Act of 2022 (FDORA) to convene a public meeting on clinical study flexibilities initiated in response to the COVID–19 pandemic. The public meeting will be convened and supported by a cooperative agreement between FDA and the Clinical Trials Transformation Initiative (CTTI) to bring the clinical research community together to discuss a variety of topics related to mitigating disruptions of clinical studies of medical products during disasters and public health emergencies (PHEs). The meeting format will include presentations and panel discussions.

DATES: The public meeting will be held virtually on October 18 and 19, 2023, from 10 a.m. to 1:30 p.m. Eastern Time. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public meeting will be held virtually using the Zoom platform. The link for the public meeting will be sent to registrants upon registration.

FOR FURTHER INFORMATION CONTACT: Dat Doan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3334, Silver Spring, MD 20993, 240–402–8926, *Dat.Doan@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This public meeting satisfies FDA's mandate under section 3605 of FDORA to convene a public meeting, not later than 180 days after the date when the COVID–19 emergency period ends, to discuss the recommendations provided by FDA during the COVID–19 emergency period to mitigate disruption of clinical studies. Among other things, the public meeting will include discussion about strategies for mitigating disruptions of clinical studies of medical products during disasters and PHEs.

II. Topics for Discussion at the Public Meeting

Topics for discussion during this meeting include:

1. The recommendations provided by FDA during the COVID–19 emergency period to mitigate disruption of clinical studies, including recommendations detailed in the guidance for industry, investigators, and institutional review boards entitled ''Conduct of Clinical Trials of Medical Products During the COVID–19 Public Health Emergency [1]'' (March 2020, updated August 2021)
2. The actions sponsors took to utilize such recommendations and the

[1] Available at: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/fda-guidance-conduct-clinical-trials-medical-products-during-covid-19-public-health-emergency.*

frequency at which such recommendations were utilized

3. The characteristics of the sponsors, studies, and patient populations impacted by such recommendations
4. Consideration of how recommendations intended to mitigate disruption of clinical studies during the COVID–19 emergency period, including any recommendations to consider decentralized clinical studies when appropriate, may have affected access to clinical studies for certain patient populations, especially underrepresented racial and ethnic minorities
5. Recommendations for incorporating certain clinical study disruption mitigation recommendations into current or additional guidance to improve clinical study access and enrollment of diverse patient populations
6. Strategies for advanced planning to mitigate disruption of clinical studies during future disasters and PHEs

III. Participating in the Public Meeting

Registration: To register for the public meeting, please visit the following website: *duke.zoom.us/meeting/register/tJAvcO-oqD4vE9Ov1Vv-A3SoItVhL7Rhg66T.* Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Registration is free, and persons interested in attending this public meeting must register to receive a link to the meeting. Registrants will receive a confirmation email after they register.

If you need special accommodations due to a disability, please contact *Summer.Starling@duke.edu* no later than October 4, 2023. Please note, closed captioning will be available automatically.

Dated: July 31, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–16544 Filed 8–2–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–P–2339]

Determination That K–TAB (Potassium Chloride) Extended-Release Tablets, 10 Milliequivalents and 20 Milliequivalents, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that K–TAB (potassium chloride) extended-release tablets, 10 milliequivalents and 20 milliequivalents, were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for potassium chloride extended-release tablets, 10 milliequivalents (meqs) and 20 meqs, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Veniqua Stewart, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6219, Silver Spring, MD 20993–0002, 301–796–3627, *veniqua.stewart@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved, and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

K–TAB (potassium chloride) extended-release tablets, 10 meqs and 20 meqs, are two of the subjects of NDA 018279, held by AbbVie Inc. The NDA was initially approved on June 9, 1980. K–TAB is indicated for the treatment and prophylaxis of hypokalemia with or without metabolic alkalosis in patients for whom dietary management with potassium-rich foods or diuretic dose reduction is insufficient.

The K–TAB (potassium chloride) extended-release tablets, 10 meqs and 20 meqs, are currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Granules India Ltd. submitted a citizen petition dated June 8, 2023 (Docket No. FDA–2023–P–2339), under 21 CFR 10.30, requesting that the Agency determine whether K–TAB (potassium chloride) extended-release tablets, 10 meqs and 20 meqs, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that K–TAB (potassium chloride) extended-release tablets, 10 meqs and 20 meqs, were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that K–TAB (potassium chloride) extended-release tablets, 10 meqs and 20 meqs, were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of K–TAB (potassium chloride) extended-release tablets, 10 meqs and 20 meqs, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that these drug products were not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list K–TAB (potassium

chloride) extended-release tablets, 10 meqs and 20 meqs, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to these drug products may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: July 31, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–16537 Filed 8–2–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–D–0301]

Fixed-Combinations and Single-Entity Versions of Previously Approved Antiretrovirals for the Treatment or Prevention of Human Immunodeficiency Virus-One Under the President's Emergency Plan for Acquired Immunodeficiency Syndrome Relief; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Fixed-Combinations and Single-Entity Versions of Previously Approved Antiretrovirals for the Treatment or Prevention of HIV–1 Under PEPFAR.'' This draft guidance provides recommendations for applications for single-entity antiretroviral (ARV) and ARV fixed-combination (FC) drug products for the treatment or prevention of human immunodeficiency virus-one (HIV–1) infection that are intended for procurement under the President's Emergency Plan for AIDS Relief (PEPFAR). Specifically, this draft guidance addresses versions of ARV drug products for which the individual ARV drug product components are already FDA-approved and for which substantial evidence of safety and efficacy of the specific drug product or combination drug product already exists. When finalized, this draft guidance will replace the previous final guidance for industry entitled ''Fixed Dose Combinations, Co-Packaged Drug Products, and Single-Entity Versions of Previously Approved Antiretrovirals for the Treatment of HIV'' issued in October 2006.

DATES: Submit either electronic or written comments on the draft guidance by November 1, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2004–D–0301 for ''Fixed-Combinations and Single-Entity Versions of Previously Approved Antiretrovirals for the Treatment of HIV–1 Under PEPFAR.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive

label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Sarita Boyd, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Silver Spring, MD 20993–0002, 301–796–1500.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Fixed-Combinations and Single-Entity Versions of Previously Approved Antiretrovirals for the Treatment or Prevention of HIV–1 Under PEPFAR.'' This draft guidance provides recommendations for applications for single-entity ARV and ARV FC drug products for the treatment of HIV–1 infection that are intended for procurement under PEPFAR. Specifically, this draft guidance addresses versions of ARV drug products for which the individual ARV drug product components are already FDA-approved and for which substantial evidence of safety and efficacy of the specific drug product or combination drug product already exists. The draft guidance discusses regulatory procedures relevant to such applications and recommendations on how to identify and address common issues. The recommendations in this draft guidance primarily focus on the tentative approval of marketing applications intended for procurement under PEPFAR, where there are patent or exclusivity barriers to final marketing approval.

When finalized, this draft guidance will replace the previous final guidance for industry entitled ''Fixed Dose Combinations and Single-Entity Versions of Previously Approved Antiretrovirals for the Treatment of HIV,'' issued October 18, 2006 (71 FR 61483). Important changes in this draft guidance compared to the 2006 final version include the following:

- Addition of information about ARV drug products for prevention of HIV–1 infection.
- Deletion of references to co-packaged products and focus on single-entity ARV and ARV FC drug products currently most needed under PEPFAR.
- Inclusion of a subsection that describes the processes for making changes to applications after tentative approval.
- Addition of updated descriptions of regulatory requirements and procedures in the main text of the document and deletion of Attachments A, B, and C.
- Addition of updated information, for example, in the section on chemistry, manufacturing, and controls, to be consistent with other guidances for industry released after 2006.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Fixed-Combinations and Single-Entity Versions of Previously Approved Antiretrovirals for the Treatment or Prevention of HIV–1 Under PEPFAR.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this draft guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 312 for the submission of investigational new drug applications have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 for the submission of new drug applications, abbreviated new drug applications and supplemental applications have been approved under OMB control number 0910–0001. The collections of information for the submission of controlled correspondence related to generic drug development have been approved under OMB control number 0910–0797. The collections of information pertaining to Prescription Drug User Fee Program have been approved under OMB control number 0910–0297. The collections of information pertaining to Generic Drug User Fee Program have been approved under 0910–0727. The collections of information related to expedited review programs for serious conditions have been approved under OMB control number 0910–0765. The collections of information for the submission of postmarketing adverse drug experience reporting have been approved under OMB control number 0910–0230. The collections of information in 21 CFR parts 210 and 211 pertaining to current good manufacturing practice have been approved under OMB control number 0910–0139. The collections of information in 21 CFR 201.57 for the submission of prescription drug product labeling have been approved under OMB control number 0910–0572. The collections of information pertaining to good clinical practice have been approved under OMB control number 0910–0843.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: July 31, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–16557 Filed 8–2–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0465]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by September 5, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0520. Also include the FDA docket number found in brackets in the heading of this document.

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: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002—21 CFR 1.278 to 1.285

OMB Control Number 0910–0520—Extension

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Act) added section 801(m) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 381(m)), which requires that FDA receive prior notice for food, including food for animals, that is imported or offered for import into the United States. Sections 1.278 to 1.282 of FDA regulations (21 CFR 1.278 to 1.282) set forth the requirements for submitting prior notice; §§ 1.283(d) and 1.285(j) (21 CFR 1.283(d) and 1.285(j)) set forth the procedure for requesting Agency review after FDA has refused admission of an article of food under section 801(m)(1) of the FD&C Act or placed an article of food under hold under section 801(l) of the FD&C Act; and § 1.285(i) sets forth the procedure for post-hold submissions.

Section 304 of the FDA Food Safety Modernization Act (Pub. L. 111–353) amended section 801(m) of the FD&C Act to require a person submitting prior notice of imported food, including food for animals, to report, in addition to other information already required, ''any country to which the article has been refused entry.'' Advance notice of imported food allows FDA, with the support of the U.S. Customs and Border Protection (CBP), to target import inspections more effectively and help protect the nation's food supply against terrorist acts and other public health emergencies. By requiring that a prior notice contain specific information that indicates prior refusals by any country and identifies the country or countries, the Agency may better identify imported food shipments that may pose safety and security risks to U.S. consumers.

This information collection enables FDA to make better informed decisions in managing the potential risks of imported food shipments into the United States. Any person with knowledge of the required information may submit prior notice for an article of food. Thus, the respondents to this information collection may include importers, owners, ultimate consignees, shippers, and carriers.

FDA regulations require that prior notice of imported food be submitted electronically using CBP's Automated Broker Interface of the Automated Commercial Environment (ABI/ACE) (§ 1.280(a)(1)) or the FDA Prior Notice System Interface (PNSI) (Form FDA 3540) (§ 1.280(a)(2)). PNSI is an electronic submission system available on the FDA Industry Systems page at *https://www.access.fda.gov.* Information the Agency collects in the prior notice submission includes: (1) the submitter and transmitter (if different from the submitter); (2) entry type and CBP identifier; (3) the article of food, including complete FDA product code; (4) the manufacturer, for an article of food no longer in its natural state; (5) the grower, if known, for an article of food that is in its natural state; (6) the FDA Country of Production; (7) the name of any country that has refused entry of the article of food; (8) the shipper, except for food imported by international mail; (9) the country from which the article of food is shipped or, if the food is imported by international mail, the anticipated date of mailing and country from which the food is mailed; (10) the anticipated arrival information or, if the food is imported by international mail, the U.S. recipient; (11) the importer, owner, and ultimate consignee, except for food imported by international mail or transshipped through the United States; (12) the carrier and mode of transportation, except for food imported by international mail; and (13) planned shipment information, except for food imported by international mail (§ 1.281).

Much of the information collected for prior notice is identical to the information collected for FDA importer's entry notice, which has been approved under OMB control number 0910–0046. The information in an importer's entry notice is collected electronically via CBP's ABI/ACE at the same time the respondent files an entry for import with CBP. To avoid double-counting the burden hours already counted in the importer's entry notice information collection, the burden hour analysis in table 1 reflects FDA's estimate of the reduced burden for prior notice submitted through ABI/ACE in column 6 entitled ''Average Burden per Response.''

In addition to submitting a prior notice, a submitter should cancel a prior notice and must resubmit the information to FDA if information changes after the Agency has confirmed a prior notice submission for review (*e.g.,* if the identity of the manufacturer changes) (§ 1.282). However, changes in the estimated quantity, anticipated arrival information, or planned shipment information do not require resubmission of prior notice after the Agency has confirmed a prior notice submission for review (§ 1.282(a)(1)(i) to (iii)). In the event that FDA refuses admission to an article of food under section 801(m)(1) or the Agency places it under hold under section 801(l) of the FD&C Act, §§ 1.283(d) and 1.285(j) set forth the procedure for requesting FDA's review and the information required in a request for review. In the event that the Agency places an article of food under hold under § 801(l) of the FD&C Act, § 1.285(i) sets forth the procedure for, and the information to be included in, a post-hold submission.

In the **Federal Register** of February 27, 2023 (88 FR 12366), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Prior Notice Submissions:						
Through ABI/ACE.						
1.280 through 1.281	N/A	1,900	7,895	15,000,500	0.167 (10 minutes).	[2] 2,505,084
Through PNSI.						

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

21 CFR section	FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
1.280 through 1.281	[3] 3540	13,000	231	3,003,000	0.384 (23 minutes).	1,153,152
Subtotal						3,658,236
Cancellations:						
Through ABI/ACE.						
1.282	N/A	25,000	1	25,000	0.25 (15 minutes).	6,250
Through PNSI.						
1.282 and 1.283(a)(5)	3540	50,000	1	50,000	0.25 (15 minutes).	12,500
Subtotal						18,750
Requests for Review and Post-hold Submissions:						
1.283(d) and 1.285(j)	N/A	1	1	1	8	8
1.285(i)	N/A	500	1	500	1	500
Subtotal:						508
Total				18,079,001		3,677,494

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] To avoid double counting, an estimated 396,416 burden hours already accounted for in the importer's entry notice information collection approved under OMB control number 0910–0046 are not included in the total.
[3] The term "Form FDA 3540" refers to the electronic submission system known as PNSI, which is available at *https://www.access.fda.gov.*

Table 1 reflects the annual estimated reporting burden associated with the information collection. During the next 3 years, we estimate each respondent will need approximately 10 minutes per submission for a total of 15,000,500 annual submissions and 2,505,083.5 rounded up to 2,505,084 annual hours of burden. Similarly, we estimate 13,000 users submitting an average of 231 notices annually, requiring approximately 23 minutes per submission. Cumulatively, this totals 3,003,000 annual responses and 1,153,152 annual hours of burden.

Regarding cancellations of prior notices, we estimate 25,000 respondents averaging 1 cancellation annually and requiring 15 minutes to do so. Cumulatively, this totals 25,000 annual submissions and 6,250 annual hours of burden. Similarly, we estimate 50,000 registered users submitting an average of 1 cancellation annually and requiring 15 minutes to do so. Cumulatively, this totals 50,000 annual responses and 12,500 annual hours of burden.

We estimate that we will receive one submission annually under § 1.283(d) or § 1.285(j) over the next 3 years. It takes approximately 8 hours to prepare a submission, which results in 8 hours of burden.

Finally, for an average of 500 post-hold submissions annually, we estimate it will take respondents 1 hour to prepare the written notification described in § 1.285(i)(2)(i), for a total of 500 annual burden hours.

Based on our experience and the average number of prior notice submissions, cancellations, and requests for review received in the past 3 years, we are adjusting our burden estimate for this information collection by increasing the number of responses and total burden. The number of responses has increased by 3,146,589 responses (from 14,932,412 to 18,079,001). The total burden has increased by 769,918 hours (from 2,907,576 to 3,677,494). We attribute the adjustment to an increase in the number of responses.

Dated: July 31, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–16568 Filed 8–2–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–2175]

Raidel Figueroa: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) permanently debarring Raidel Figueroa from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Figueroa was convicted of a felony under Federal law for conduct that relates to the regulation of a drug product under the FD&C Act. Mr. Figueroa was given notice of the proposed permanent debarment and was given an opportunity to request a hearing to show why he should not be debarred within the timeframe prescribed by regulation. Mr. Figueroa has not responded to the notice. Mr. Figueroa's failure to respond and request a hearing within the prescribed timeframe constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is effective August 3, 2023.

ADDRESSES: Any application by Mr. Figueroa for special termination of debarment under section 306(d)(4) of the FD&C Act (21 U.S.C. 335a(d)(4)) may be submitted as follows:

Electronic Submissions

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. An application submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your application will be made public, you are solely responsible for ensuring that your application 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 application, that information will be posted on *https://www.regulations.gov.*

• If you want to submit an application with confidential information that you do not wish to be made available to the public, submit the application as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

• *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 a written/paper application submitted to the Dockets Management Staff, FDA will post your application, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All applications must include the Docket No. FDA–2022–N–2175. Received applications 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 an application with confidential information that you do not wish to be made publicly available, submit your application 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 your application. 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. 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, 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 between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500. Publicly available submissions may be seen in the docket.

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Compliance and Enforcement, Office of Policy, Compliance, and Enforcement, Office of Regulatory Affairs, Food and Drug Administration, at 240–402–8743, or *debarments@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a)(2)(B) of the FD&C Act requires debarment of an individual from providing services in any capacity to a person that has an approved or pending drug product application if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the regulation of any drug product under the FD&C Act. On August 31, 2022, Mr. Figueroa was convicted in the U.S. District Court for the Southern District of Florida, Fort Lauderdale Division, when the court entered a judgment of conviction, after his plea of guilty, to one count of conspiracy to defraud the United States in violation of 18 U.S.C. 371, one count of falsification of records in a Federal investigation in violation of 18 U.S.C. 1519, one count of obstruction of proceedings before an Agency of the United States in violation of 18 U.S.C. 1505, and one count of distribution of adulterated drugs in interstate commerce in violation of 21 U.S.C. 331(a) (section 301(a) of the FD&C Act), all felony offenses under Federal law.

The factual basis for this conviction is as follows: Mr. Figueroa was the Chief Executive Officer and co-owner of Pharmatech, LLC, a drug and dietary supplement manufacturer that operated in Broward County, FL. From at least 2016 through at least March 2017, Pharmatech manufactured and distributed Diocto Liquid, a drug used to treat constipation in adults and children. In July 2016, FDA initiated an inspection at Pharmatech as part of an investigation into an outbreak of *Burkholderia cepacia* (*B. cepacia*) infections. *B. cepacia* is the name for a group or ''complex'' of bacteria typically found in soil and water. These bacteria pose little medical risk to healthy people, but people who have certain health problems like weakened immune systems or chronic lung diseases may be more susceptible to *B. cepacia* infections. The effects of *B. cepacia* can include serious respiratory infections and other types of infections. Contaminated medicines can transmit *B. cepacia,* and the bacteria are often resistant to common antibiotics. At the close of FDA's inspection in August of 2016, FDA notified Mr. Figueroa that a water sample taken from Pharmatech's water system had tested positive for the presence of *B. cepacia.* In his written response to FDA's inspectional observations, Mr. Figueroa advised FDA that Pharmatech was re-engineering its purified water system to prevent contamination of the water used for both production and cleaning purposes. Following the July–August 2016 FDA inspections, Mr. Figueroa also temporarily stopped manufacturing liquid products.

In March 2017, FDA initiated another inspection at Pharmatech. FDA investigators asked Mr. Figueroa to provide a product list of all products that Pharmatech had manufactured after it resumed manufacturing in November 2016. Mr. Figueroa knowingly excluded Diocto Liquid from Pharmatech's products list that he provided FDA investigators despite Pharmatech having shipped approximately 7,308 units of the drug earlier that month. When FDA investigators later discovered that the product list Mr. Figueroa provided them was incomplete, FDA investigators again requested he provide them with a complete list. Mr. Figueroa caused a second product list to be produced to FDA; he again falsely represented to FDA that it was a complete list when he knew it was false because it omitted Diocto Liquid.

In April 2017, Mr. Figueroa provided FDA a written memorandum regarding Pharmatech's water system. That memorandum falsely stated that all data for Phase 3 testing of Pharmatech's new water system had met ''acceptance criteria,'' although Mr. Figueroa was aware the water system had not met acceptance criteria because a water sample taken on February 15, 2017, tested presumptive positive for the presence of *B. cepacia.*

During this same March–May 2017 inspection, when FDA investigators requested that Mr. Figueroa identify any other business he owned, he failed to disclose that he owned and controlled Ofcus Pharma, which was a company established for the purpose of manufacturing oral solid drugs and dietary supplements. Mr. Figueroa later asked someone else to tell FDA investigators that they were the owner of Ofcus Pharma if that firm was ever inspected by FDA, and not to disclose that Mr. Figueroa was the owner of Ofcus Pharma.

In July 2017, the Centers for Disease Control and Prevention notified FDA of multiple cases of *B. cepacia* infections in pediatric patients at Stanford Children's Health Lucile Packard Children's Hospital in Palo Alto, CA and Johns Hopkins Children's Center in Baltimore, MD. FDA investigated and collected bottles of Diocto Liquid from these medical centers. The collected bottles were from the same lot that Pharmatech distributed in March 2017—the same lot that Pharmatech failed to disclose to FDA. Several of the bottles contained total aerobic microbial counts and total yeast and mold counts in excess of acceptable limits and some of the bottles also tested positive for the presence of *B. cepacia.*

In September 2017, FDA initiated an inspection of Ofcus Pharma. During that inspection the individual Mr. Figueroa asked to misrepresent to FDA that they owned Ofcus Pharma, did in fact make false statements to an FDA investigator when they told the investigator they had full ownership of Ofcus Pharma.

Based on this conviction, FDA sent Mr. Figueroa by certified mail on March 20, 2023, a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(B) of the FD&C Act, that Mr. Figueroa was convicted, as set forth in section 306(l)(1) of the FD&C Act, of a felony under Federal law for conduct relating to the regulation of a drug product under the FD&C Act. The proposal also offered Mr. Figueroa an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to file a timely request for a hearing would constitute an election not to use the opportunity for a hearing and a waiver of any contentions concerning this action. Mr. Figueroa received the proposal on March 30, 2023. He did not request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(a)(2)(B) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Figueroa has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the FD&C Act.

As a result of the foregoing finding, Mr. Figueroa is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application, effective (see **DATES**) (see sections 306(a)(2)(B) and (c)(2)(A)(ii) of the FD&C Act). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses in any capacity the services of Mr. Figueroa during his debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Mr. Figueroa provides services in any capacity to a person with an approved or pending drug product application during his period of debarment he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug application from Mr. Figueroa during his period of debarment, other than in connection with an audit under section 306 of the FD&C Act (section 306(c)(1)(B) of the FD&C Act). Note that, for purposes of sections 306 and 307 of the FD&C Act, a ''drug product'' is defined as a ''drug subject to regulation under section 505, 512, or 802 of this Act [(21 U.S.C. 355, 360b, 382)] or under section 351 of the Public Health Service Act [(42 U.S.C. 262)]'' (section 201(dd) of the FD&C Act (21 U.S.C. 321(dd))).

Dated: July 31, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–16550 Filed 8–2–23; 8:45 am]

BILLING CODE 4161–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–2850]

Prescription Drug User Fee Rates for Fiscal Year 2024; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice entitled ''Prescription Drug User Fee Rates for Fiscal Year 2024'' that appeared in the **Federal Register** of July 28, 2023. The document announced the rates for prescription drug user fees for fiscal year 2024. The document was published with an incorrect value in a table. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Lisa Granger, Office of Policy, Legislation, and International Affairs, Food and Drug Administration, 301–796–9115, *Lisa.Granger@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 28, 2023 (88 FR 48881), in FR Doc. 2023–15911, the following correction is made:

On page 48883, in section II.C., table 4, ''CDER Actual FY 2022 Workload Volumes and Predicted FY 2024 Workload Volumes,'' in the third column (''FY 2024 predictions''), fourth row (''NDA/BLA Original''), ''1,136'' is corrected to read ''136.''

Dated: July 31, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–16575 Filed 8–2–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Supplemental Award; Early Childhood Developmental Health Systems Cooperative Agreement

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of a HRSA-initiated supplemental award.

SUMMARY: HRSA announces the award of a supplement for a total of approximately $1 million in fiscal year (FY) 2023 for the Early Childhood Developmental Health Systems (ECDHS) cooperative agreement. The supplement will provide approximately $600,000 to the current recipient during the period of September 30, 2023, to September 29, 2024, to continue to support the implementation, spread, and scale of early childhood development (ECD) expert integration, and associated early childhood systems development. This includes providing intensive, individualized technical assistance (TA) to four additional Transforming Pediatrics in Early Childhood (TPEC) Program state-level recipients. In addition, the supplement further includes approximately $400,000 to provide TA to HRSA-funded health centers who are expanding early childhood developmental services through ECD funding.

FOR FURTHER INFORMATION CONTACT: Natalie Surfus, MPH; Public Health Analyst, Division of Home Visiting and Early Childhood Systems, Maternal and Child Health Bureau. Telephone: (240) 381–8202; Email: *NSurfus@hrsa.gov.*

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: ZERO TO THREE National Center for Infant, Toddler and Families, Inc.

Amount of Non-Competitive Award: One combined supplemental award at $1 million.

Project Period: September 30, 2023, to September 29, 2024.

Assistance Listing (CFDA) Numbers: 93.110/93.129.

Award Instrument: Supplement for continued support of the implementation, spread, and scale of ECD expert integration and associated systems development nationwide and for the provision of TA to HRSA funding recipients.

Authorities: Social Security Act, title V, section 501(a)(2) (42 U.S.C. 701(a)(2)); and section 330(l) of the Public Health Service Act (42 U.S.C. 254b(l)).

TABLE 1—RECIPIENTS AND AWARD AMOUNTS

Grant No.	Award recipient name	City, state	FY23 supplement award amount
UK2MC46349	ZERO TO THREE National Center for Infant, Toddler, and Families, Inc	Washington, DC	$1 million.

Justification: HRSA awarded the ECDHS program in FY 2022 under the Title V Maternal and Child Health Services Block Grant for Special Projects of Regional and National Significance (SPRANS). Programmatic expectations for the recipient include providing intensive, individualized TA to four state-level TPEC program (HRSA–22–141) recipients, along with specialized and universal TA opportunities with a nationwide reach, to support, spread, and scale ECD expert integration and associated systems development. The Consolidated Appropriations Act, 2023, Public Law 117–328, division B, title II, included additional SPRANS funding; House Report 117–403, which accompanied the Consolidated Appropriations Act, 2023, included an increase for ECD Expert Grants. HRSA, through its Maternal and Child Health Bureau, will therefore provide a supplement of approximately $600,000 in SPRANS funding to the current ECDHS recipient to (1) expand intensive, individualized TA to an additional four TPEC recipients; (2) support alignment between TPEC recipients, other Maternal and Child Health Bureau-funded early childhood partners, and HRSA-funded health centers to support the integration of these efforts within a comprehensive early childhood system; and (3) support the development and dissemination of additional TA resources with nationwide reach and scope, including outreach and coordination with other TA entities.

House Report 117–403 also provided guidance to HRSA's Bureau of Primary Health Care to use appropriated funds ''to expand and further integrate early childhood development services and expertise, including by hiring or contracting for early childhood development specialists,'' and ''to create a service expansion grant opportunity for health centers, *with training and technical assistance to be provided by the Maternal and Child Health Bureau. . .*'' (italics added). To support that service expansion grant opportunity (HRSA–23–028), an additional supplement of approximately $400,000 in Health Center Program funding will be provided under this supplement to the ECDHS recipient to adapt or create TA resources on ECD topics for all HRSA-funded health centers, provide specialized TA to subsets of HRSA-funded health centers based on particular needs, and support health centers' connection to and alignment with other relevant efforts to incorporate ECD in pediatric health services. TA resources developed using this funding will also be made available by the recipient, at no additional cost, to other HRSA-funded entities and to early childhood system programs and leaders pursuing aligned objectives, including through HRSA-supported dissemination channels.

Collectively, the supplements will leverage existing knowledge, expertise, and opportunity across HRSA and its non-federal partners to improve equitable access to a continuum of ECD services for families nationwide and will build capacity of the health system to deliver high-quality pediatric services that address the holistic needs of children and families.

Carole Johnson,

Administrator.

[FR Doc. 2023–16494 Filed 8–2–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Maternal and Child Health Bureau Performance Measures for Discretionary Grant Information System, OMB No. 0915–0298—Revision.

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with of the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than September 5, 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 Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Samantha Miller, the HRSA Information Collection Clearance Officer at

paperwork@hrsa.gov or call 301–443–3983.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Maternal and Child Health Bureau (MCHB) Performance Measures for Discretionary Grant Information System (DGIS), OMB No. 0915–0298—Revision.

Abstract: Approval from OMB is sought to implement revisions to the MCHB Performance Measures for DGIS. The goals of the redesigned performance measures are to: (1) improve clarity and validity of DGIS forms; (2) increase alignment with MCHB's Strategic Plan and other performance measurement efforts; (3) produce timely, actionable data for program management; (4) support communications about the range of HRSA's maternal and child health (MCH) programs; (5) reduce the number and complexity of data collection forms; and (6) improve data quality.

The revised forms are grouped into two general categories: central measures and program specific measures. Central measures include basic, topical, activity, and outcome forms. There are four sets of program-specific forms. Grant programs are assigned forms based on their activities and individual grantees respond to only a limited number of forms that are relevant to their specific program. Many of these forms are specific to certain types of programs and are not required of all grantees.

HRSA intends to make three changes from what was outlined in the notice (88 FR 28566) published on May 4, 2023. In the Healthy Start Site Form, ''Census Tract'' has been added as an option to define service area and ''Telehealth'' has been added as a selection option for types of services provided. The DGIS postpartum measure in Healthy Start Form 11 will be aligned with the new Title V National Performance Measure for postpartum visit, changing the definition from ''within 4–12 weeks'' to ''within 12 weeks.''

No public comments were received during the 60-day comment period.

No additional forms are proposed to be added, removed, or revised beyond what was specified in the May 4, 2023, notice. As noted in the May 4, 2023, notice, HRSA is removing 52 existing forms, revising 23 existing forms, and adding 25 new forms to the current information collection for MCHB DGIS. Forms and detail sheets showing the proposed revisions are available upon request.

Need and Proposed Use of the Information: The performance data collected through the DGIS serves several purposes, including grantee monitoring, program planning, performance reporting, and the ability to demonstrate alignment between MCHB discretionary programs and the Title V MCH Services Block Grant program. This revision will facilitate more efficient and accurate reporting of information related to Capacity Building activities, Financial and Demographic data, and Training activities.

Likely Respondents: The grantees for MCHB Discretionary Grant Programs.

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

Form name	Number of respondents	Responses per respondent	Total responses	Burden hours per response	Total burden hours
Project Abstract	817	1	817	1.33	1,087
Project Abstract (Research Projects Only)	58	1	58	0.66	38
Financial Form	817	1	817	0.87	711
Health Equity	817	1	817	0.47	384
Direct and Enabling Services	476	1	476	1.89	900
Training and Workforce Development	250	1	250	2.42	605
Partnerships and Collaboration	380	1	380	1.04	395
Engagement of Persons with Lived Experience	416	1	416	1.58	657
Technical Assistance	300	1	300	2.24	672
Outreach and Education	500	1	500	0.61	305
Research	65	1	65	3.11	202
Guidelines and Policy	78	1	78	0.70	55
Data and Information Systems	50	1	50	0.67	34
Quality Improvement and Evaluation	346	1	346	0.29	100
Knowledge Change	200	1	200	1.64	328
Behavior Change	200	1	200	1.56	312
Products and Publications	672	1	672	4.23	2,843
Training Form 2	168	1	168	0.69	116
Training Form 3	41	1	41	0.99	41
Training Form 4	130	1	130	1.52	198
Training Form 7	6	1	6	0.83	5
Training Form 8	6	1	6	0.75	5
Training Form 9	6	1	6	0.92	6
Training Form 14	6	1	6	3.64	22
Training Form 15	52	1	52	3.17	165
Faculty and Staff Information	124	1	124	1.92	238
Short-Term Trainees	8	1	8	0.67	5
Medium-Term Trainees	121	1	121	2.49	301
Long-Term Trainees	112	1	112	6.37	713
Former Long-Term Trainees	106	1	106	1.60	170
LEAP Trainee Information	6	1	6	0.65	4
HS 4	101	1	101	0.57	58

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents	Responses per respondent	Total responses	Burden hours per response	Total burden hours
HS 10	101	1	101	0.31	31
HS 11	101	1	101	0.61	62
HS 12	101	1	101	0.33	33
HS 13	101	1	101	0.50	51
HS 14	101	1	101	0.43	43
HS 15	101	1	101	0.45	45
HS 16	101	1	101	0.39	39
HS 17	101	1	101	0.40	40
HS 18	101	1	101	0.33	33
HS 19	101	1	101	0.38	38
HS 20	101	1	101	0.37	37
HS 21	101	1	101	0.36	36
Healthy Start Site Form	101	1	101	0.32	32
EMSC 4	58	1	58	0.92	53
EMSC 8	58	1	58	0.09	5
EMSC 9	58	1	58	0.42	24
EMSC 10	58	1	58	0.46	27
F2F 1	59	1	59	2.76	163
Form 10	200	2	400	12.87	5,148
Total	*817		817		17,616

*The number of grantees is an estimate as it fluctuates each year.

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. 2023–16514 Filed 8–2–23; 8:45 am]

BILLING CODE 4165–15–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Adoption of Policy Statement on Climate Change and Historic Preservation

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of adoption of policy statement on climate change and historic preservation.

SUMMARY: The Advisory Council on Historic Preservation has adopted its Policy Statement on Climate Change and Historic Preservation.

DATES: The policy statement was adopted on June 16, 2023.

FOR FURTHER INFORMATION CONTACT: Druscilla Null, (202) 517–1487, *dnull@achp.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Council on Historic Preservation (ACHP), an independent federal agency created by the National Historic Preservation Act (NHPA), works to promote the preservation, enhancement, and sustainable use of our nation's diverse historic resources, and advises the President and the Congress on national historic preservation policy.

Under the NHPA, the ACHP's duties include advising the President and Congress on matters relating to historic preservation; recommending measures to coordinate activities of federal, state, and local agencies and private institutions and individuals related to historic preservation; and advising on the dissemination of information pertaining to those activities. In keeping with these mandates, in July 2021 the ACHP initiated discussions regarding the impact of climate change on historic places and how the ACHP might advise and assist federal agencies and other stakeholders in addressing the issue.

To focus ACHP efforts, Vice Chairman Jordan Tannenbaum (then acting ACHP Chair) convened the ACHP Climate Change and Historic Preservation Task Force, which first met in November 2021. In addition to Vice Chairman Tannenbaum and ACHP members Reno Franklin, Rick Gonzalez, Kristopher King, and Jay Vogt, the following agencies and organizations were represented on the Task Force: National Association of Tribal Historic Preservation Officers; National Conference of State Historic Preservation Officers; National Trust for Historic Preservation; Department of Defense; Department of Homeland Security; Department of Housing and Urban Development; Department of the Interior; Department of Transportation; Department of Veterans Affairs; and General Services Administration. Following her confirmation by the Senate in December 2022 and subsequent swearing in, current ACHP Chair Sara C. Bronin also joined the task force.

Based on task force meeting discussions, ACHP staff developed a draft policy statement that was reviewed by the task force. A revised draft of the policy statement was then developed and provided to the full ACHP membership for initial review. In March 2023, the members approved providing the draft to stakeholders and the public for comment. Two consultation events were held, one for Tribal and Native Hawaiian organization leaders and the other for State Historic Preservation Officers and their staffs. General public comments also were solicited. Based on the feedback received, the draft was revised. The final version of the policy statement was adopted by vote of the ACHP members on June 16, 2023.

The ACHP issues the regulations (36 CFR part 800) that implement section 106 of the NHPA, which requires federal agencies to take into account the effects of projects they carry out, approve, or fund on historic properties. The policy statement applies to the consideration of climate change issues during section 106 reviews.

While the policy statement pertains to federal agency challenges and opportunities, it also speaks broadly to nonfederal parties, including but not limited to state, tribal, and local governments; preservation planners; and the public. The document defines the scope of the challenge, discussing the range of historic property types affected and the variety of climate impacts. Effects to sacred sites and other properties significant to Indian Tribes and Native Hawaiian organizations are highlighted, as are the disproportionate impacts of climate change on historic places in underserved communities.

The bulk of the document consists of a series of policy principles that are grouped under seven general topics: gathering information; planning for climate change; climate change mitigation; equity; flexibility; education; and collaboration.

Text of the Policy Statement on Climate Change and Historic Preservation

The full text of the adopted policy statement is reproduced below:

ACHP Climate Change and Historic Preservation Policy Statement

America's historic properties—important places that help to define and connect people to their communities—are experiencing escalating climate impacts that are increasingly leading to their damage and destruction. The Advisory Council on Historic Preservation (ACHP) has developed this policy statement to define more clearly connections between climate change and historic properties, to articulate policy principles the ACHP will integrate into the section 106 process, and to guide public-serving institutions on how they may acknowledge, plan for, mitigate, and adapt to climate change impacts on historic properties.

Scope of the Issue

In 2014, the Union of Concerned Scientists released an important report, *National Landmarks at Risk: How Rising Seas, Floods, and Wildfires Are Threatening the United States' Most Cherished Historic Sites.* Through a series of case studies illustrating climate change impacts to well-known historic places (many of them federally owned and managed), the report concluded that:

Many of the United States' iconic landmarks and heritage sites are at risk as never before. Sea level rise, coastal erosion, increased flooding, heavy rains, and more frequent large wildfires are damaging archaeological resources, historic buildings, and cultural landscapes across the nation. From sea to shining sea, a remarkable number of the places where American history was made are already under threat. The geographic and cultural quilt that tells the American story is fraying at the edges—and even beginning to be pulled apart—by the impacts of climate change.

While that report focused on ''iconic'' sites, all kinds of historic buildings and neighborhoods, archaeological sites, Tribal sites and resources, and culturally important landscapes (both designed and natural) throughout the country (collectively, ''historic properties''), as well as associated intangible cultural heritage, are at risk from a broad range of potential climate impacts, including sea level rise; extreme weather events; increased wildfires; drought; melting permafrost and erosion; and temperature changes. These impacts are both direct and cumulative, and threaten not only historic properties but also the terrestrial and aquatic flora and fauna associated with historically and culturally important places. The loss of or damage to historic properties from such climate impacts can irrevocably change a community's sense of place and erode people's sense of personal identity and cultural stability.

Among the historic properties affected by climate change are sacred sites, landscapes, and other properties of religious and cultural significance to Indian Tribes and Native Hawaiian organizations (NHOs). These historic properties frequently are inseparable from the natural landscape and reflect a symbiotic relationship between nature and culture that is increasingly threatened by climate change. As described in the 2021 *Status of Tribes and Climate Change Report,* authored by the Status of Tribes and Climate Change Working Group convened by the Institute for Tribal Environmental Professionals:

Tribes have long faced many challenges in protecting and preserving [Tribal cultural resources], including from the multiplying effects of climate change. From the erosion of ancient burials out of coastal bluffs on the Pacific coast to the disruption of habitats and life cycles for traditional subsistence foods and medicines in the Great Plains and the weathering and loss of ancient petroglyphs and pictographs in the Southwest, climate change is threatening Tribal cultural resources ranging from tangible archaeological sites to intangible cultural beliefs and values.

Listening sessions and other outreach efforts with Indian Tribes and NHOs regarding climate impacts have helped to shape this policy statement and underscore the severity of these impacts.

It also is important to acknowledge the often-disproportionate impact of climate change on disadvantaged and underserved communities. These communities generally are limited in their ability to plan for and adapt to climate change, often lacking management and decision-making authority for key resources, and thus may be constrained in addressing impacts on historic properties.

Role of the Federal Government

The ACHP, an independent federal agency created by the National Historic Preservation Act (NHPA), works to promote the preservation, enhancement, and sustainable use of our nation's diverse historic resources. It is the ACHP's responsibility to ''advise the President and Congress on matters relating to historic preservation, recommend measures to coordinate activities of federal, state, and local agencies and private institutions and individuals related to historic preservation, and advise on the dissemination of information pertaining to those activities'' (54 U.S.C. 304102). The ACHP has developed this policy statement in keeping with this mandate.

In accordance with the NHPA, the federal government is to be a national preservation leader, manage and care for historic properties under its control, and foster both nonfederal, governmental, and private preservation activities. Section 110 of the NHPA (54 U.S.C. 306101–306107; 306109–306114) sets out the broad historic preservation responsibilities of federal agencies and is intended to ensure that historic preservation is fully integrated into their ongoing programs. Section 106 of the NHPA (54 U.S.C 306108) requires federal agencies to consider the effects of projects they carry out, approve, or fund on historic properties. As the ACHP issues the regulations (36 CFR part 800) that guide federal agencies in completing review of federal projects under section 106, this policy statement applies to the consideration of climate change issues during section 106 reviews.

Climate change adds new challenges to fulfilling federal responsibilities under the NHPA and calls for creative approaches. All federal agencies should be considering impacts to historic properties as part of their climate change planning. Progress is being made in this regard, but much more remains to be done. The National Park Service has issued several studies and guidance documents to guide both its own

response to climate change and to assist others. Building upon and expanding such federal guidance will be vitally important.

Intended Audience

Given the leadership role of the federal government in addressing both climate impacts and historic preservation, the following policy principles seek to promote informed federal decision making and responsible stewardship of historic properties. The ACHP also has designed this policy statement to assist community groups, nonprofit organizations, and Tribal, state, and local governments (collectively, along with federal agencies, ''public-serving institutions'') as they seek to address the impacts of climate change on historic properties important to the people they represent.

Policy Principles

Gathering Information

1. *Public-serving institutions should work collaboratively to assemble information about previously designated or documented historic properties and to identify previously undesignated or undocumented historic properties, with priority on areas with the highest potential for climate impacts.* We cannot protect historic properties if we do not know where and what they are. Climate change effects can be felt anywhere, and thus public-serving institutions should establish the long-term goal of assembling accurate, georeferenced information about historic properties, known and unknown, wherever they are. In the near term, public-serving institutions should prioritize surveying known and unknown historic properties in areas where severe effects to historic properties can be readily anticipated, whether from direct climate threats or expected impacts from climate change adaptation and mitigation solutions. Precedence should be given to areas where there has been little previous survey for historic properties or where an existing survey is outdated. Often, these priority areas include disadvantaged and underserved communities that may previously have received limited attention and that may lack resources to undertake surveys of their own. Flexibility in the design and function of survey projects can help to advance equity goals in identification of historic properties.

Consistent with their missions and authorities, federal agencies should both prioritize the survey and identification of federal historic properties threatened by climate change and—through funding and technical assistance—encourage Tribal, state, local, and nongovernmental survey efforts. Federal agencies are required under section 110 of the NHPA (54 U.S.C. 306102) to identify historic properties under their jurisdiction or control; however, additional resources are needed if agencies are to accelerate efforts to identify historic properties as part of climate change planning. In the process of conducting these surveys and documenting Tribal sites and resources, federal agencies should act in accordance with the confidentiality provisions of section 304 of the NHPA (54 U.S.C. 307103).

2. *When planning to address climate impacts on historic properties, public-serving institutions should seek out and incorporate adaptation and mitigation strategies grounded in Indigenous Knowledge.* Indian Tribes and NHOs possess a body of observations, oral and written knowledge, innovations, practices, and beliefs developed through interaction and experience with the environment. The expertise embodied by such Indigenous Knowledge and its contemporary use by Indian Tribes and NHOs can be critically important to the development of climate change adaptation and mitigation strategies. It is paramount that Indigenous Knowledge is considered when addressing climate impacts on historic properties of direct concern to Indian Tribes and NHOs. Indigenous Knowledge also can contribute to developing climate-related strategies for other historic properties, for example when Indigenous Knowledge of wildfire management assists in making areas and communities more resilient to wildfire threats.

Planning for Climate Change

3. *Public-serving institutions should consider impacts to historic properties as an integral part of climate-related planning and implementation.* Governments—federal, Tribal, state, and local—and other public-serving institutions are working to prepare for and adjust to both current and projected impacts of climate change. Efforts include climate protective infrastructure projects, such as living shorelines and seawalls; climate resilient infrastructure projects where roads, sewers, waterlines, etc. are built or retrofitted to better resist climate impacts; and efforts to relocate threatened historic buildings out of climate risk-prone areas. To ensure effects to historic properties are not overlooked, thus leading to their destruction or making them more difficult to later address, public-serving institutions must proactively account for historic properties during climate change planning and implementation activities. Doing so not only serves to help protect historic properties but also supports other aspects of public agency missions and community priorities that benefit from the continued stewardship of historic properties. At the macro level of consideration, expanding and enhancing discussion of historic properties in the periodic National Climate Assessment developed by the U.S. Global Change Research Program would be beneficial.

4. *Public-serving institutions should consider impacts to historic properties as an integral part of disaster preparedness and response.* While some climate change impacts, such as sea level rise, progress gradually, others, such as wildfires and extreme weather events, present immediate natural hazards. Plans for disaster preparedness and disaster response should assess the vulnerability of historic properties, delineate actions to help reduce or avoid disaster impacts on historic properties, and explain how such properties will be treated during post-disaster recovery efforts. Federal disaster assistance programs should encourage and incentivize Tribal, state, and local governments to incorporate such considerations into disaster preparedness and response planning. Historic building relocation should be prioritized in the context of federal or state government buyout programs where at-risk properties are acquired to reduce future disaster losses.

5. *Public-serving institutions serving communities experiencing climate change-related migration, including community-driven relocation of entire communities, should address the impacts of such migration on historic properties in their planning strategies.* Adapting to the changing climate will in some cases mean population shifts into, out of, and within communities, resulting in a number of possible impacts to historic properties. Historic properties in areas experiencing population increases consequently may be threatened by development pressures. Historic properties in risk-prone areas experiencing population decreases may suffer from neglect and displacement of residents with long-standing ties to the area. In extreme situations, entire populations of communities may need to relocate to escape climate-induced impacts, triggering difficult choices regarding the abandonment or possible relocation of historic properties. Considering such migration-based effects during climate adaptation planning is critical to

reducing negative effects to historic properties, culture, and community.

Climate Change Mitigation

6. *Public-serving institutions should contribute to decarbonization by promoting reuse of older and historic buildings and by encouraging the thoughtful retrofit of such buildings to improve operational energy efficiency.* About 39 percent of global carbon emissions come from the construction and operation of buildings. This impact can be reduced by reusing existing buildings, thus avoiding the embodied carbon emissions inherent in new construction, including the carbon associated with the manufacturing and transportation of new materials and the removal and disposal of building materials from demolished buildings. Reuse of existing buildings in urban areas also contributes to climate change mitigation by promoting density, helping to combat urban sprawl and its attendant negative environmental impacts. In terms of operational impacts, carbon emissions can be reduced by making existing buildings more energy efficient.

Since approximately 40 percent of America's building stock is at least 50 years old, it is critical that reuse and energy retrofit of older and historic buildings (including enhanced electrification and increased energy efficiency standards) be fundamental priorities. In worst case scenarios, where a historic building will not be retrofitted and demolition cannot be avoided, practices such as deconstruction and reuse of salvageable materials should be employed to reduce the demolition's carbon impact. Federal, Tribal, state, and local governments should lead by example through the management of the older and historic buildings in their real estate portfolios and encourage private sector action through funding and other incentives. As part of portfolio management decision making, consideration should be given to using full life-cycle accounting to value the embodied carbon in historic buildings versus new construction in order to facilitate fact-based decision making. In addition, government standards and programs that promote the rehabilitation of historic properties should be assessed to ensure that they align with climate mitigation and adaptation goals; that they facilitate a variety of modern uses; and that they encourage implementation of energy efficiency measures as integral to thoughtful preservation of historic buildings.

7. *Development of clean energy projects and climate-friendly transportation infrastructure projects should be expedited through efficient and effective permitting processes and environmental reviews (including section 106 reviews), while still ensuring full consideration of potential impacts to historic properties.* Reducing climate change will require significant investment in large-scale clean energy projects (such as solar farms, wind farms, hydropower plants, geothermal plants, new and expanded transmission facilities, carbon capture and sequestration projects, and mining of key minerals needed for clean energy technologies) as well as smaller-scale distributed generation projects, such as rooftop solar panels, that generate electricity at or near where it will be used. Climate-friendly transportation infrastructure projects—including rail, bus rapid transit, bicycle infrastructure, and pedestrian infrastructure—also are critical to climate change mitigation since the transportation sector is responsible for more greenhouse gas emissions than any other sector of the American economy.

Environmental reviews and permitting processes for these types of important projects, especially those with minimal and small-scale impacts, should be managed in such a way as to proceed expeditiously. However, potential adverse effects to historic properties must be carefully addressed. Of particular concern, such projects (particularly those with landscape-scale impacts) can threaten sacred sites and other properties of religious and cultural significance to Indian Tribes and NHOs, sometimes striking at the very heart of their cultures. During section 106 review of clean energy projects and climate-friendly transportation infrastructure projects, federal agencies should explore use of program alternatives to tailor and expedite the review process while at the same time ensuring the consultation process is accessible, meaningful, and transparent to the wide variety of consulting parties and stakeholders, including Indian Tribes and NHOs.

Equity

8. *Public-serving institutions should recognize that historic properties important to disadvantaged and underserved communities may be disproportionately affected by climate change and that such communities often are ill-equipped to undertake needed interventions.* Disadvantaged and underserved communities tend to lack the economic and political capital to plan for and adapt to climate change and may not have direct control over decision-making for community resources. Many such communities also are particularly susceptible to the physical impacts of climate change. For example, low-income residents and people of color disproportionally reside in flood-prone urban areas. Also, disadvantaged groups are more likely to reside in older housing stock that is in greater need of weatherization and energy retrofitting. Such constraints may hinder disadvantaged and underserved communities in trying to make the places they care about—including historic properties—more resilient to climate impacts. Public-serving institutions should recognize and seek to address this problem by helping those affected identify their historic properties, assess their community's vulnerability, and develop strategies to balance appropriate adaptation and mitigation responses with the need to preserve their community identity and sense of place.

9. *Federal, state, and local government entities that oversee planning, permitting processes, and environmental reviews (including section 106 reviews) for climate adaptation and climate mitigation projects should consult regarding historic properties with Indian Tribes, NHOs, and disadvantaged and underserved communities, and capacity building options should be explored for supporting their participation in consultation.* The section 106 process under the NHPA already requires federal agency consultation with Indian Tribes, NHOs, and other consulting parties. Here, the ACHP reiterates that consultation is necessary and important to ensuring climate adaptation and mitigation projects address impacts to historic properties of importance to Indian Tribes, NHOs, and disadvantaged and underserved communities. Soliciting and considering their views should be done proactively, early in planning, and throughout environmental reviews and permitting processes. During development of adaptation and mitigation strategies, local knowledge (the information held by local communities and individuals) and the Indigenous Knowledge of Indian Tribes and NHOs can be valuable assets to planning.

In some cases, limited resources may constrain the active participation of disadvantaged and underserved communities in consultation. Federal, state, and local government entities should consider options for strategic financial investments or other assistance to help with needed capacity development. The ACHP previously has recommended capacity-building support for consulting parties pursuant

to the agency's ''Guidance on Assistance to Consulting Parties in the section 106 Review Process.'' Since many Indian Tribes have been incorporating consideration of climate change into their environmental reviews and permitting processes for decades, climate-related project planning should seek to adopt or align with existing practices and standards, where feasible.

Flexibility

10. *The federal government should expand and more flexibly apply its guidance on the treatment of historic properties threatened by climate change.* Federal standards significantly influence the rehabilitation of historic properties, public and private alike, because they are often adopted or adapted by state and local governments and referenced in private party actions (such as preservation easements). The federal government should accelerate the development of additional guidance for acceptable treatments of historic buildings, sites, and landscapes facing climate risks. The guidance should extend beyond flooding to the broad range of climate impacts, should incorporate the latest technological innovations and material treatments, and should increase flexibility in retrofitting buildings to be more resilient while preserving their historic character as much as possible. Likewise, the National Flood Insurance Program should be reviewed to explore how the program might further encourage the modification or relocation of historic buildings to enhance their resiliency, and to evaluate the impacts of waivers issued for historic properties upon community and building resiliency, public cost, and economic growth.

11. *Public-serving institutions should develop sensitive and creative solutions to help communities accept and contend with the reality that many historic properties will have to be altered if they are to survive climate change, and many others inevitably will be lost to climate impacts.* Interventions to protect historic properties from climate impacts or reduce such impacts may necessitate changes to the properties or their surroundings that are less than ideal. Such actions, while saving the properties from loss, may result in negative effects. Public-serving institutions should start talking more openly about these issues, should guide communities in how to triage priorities regarding what properties to surrender to climate destruction, and should develop sensitive and sensible strategies to help residents deal with such losses.

12. *Consideration of alternatives during environmental review of climate-related projects, including during section 106 review, should be approached flexibly to promote development of nimble, innovative, and expeditious ways to protect historic properties.* Section 106 review and other environmental reviews provide structured processes for exploring alternatives to avoid or minimize any adverse impacts of climate adaptation and mitigation projects. Since the evolving climate crisis poses new and complex challenges for the protection of historic properties that need to be addressed on an increasingly accelerated timeline, it is important that consideration of alternatives be rooted in flexibility and creativity.

Education

13. *Public-serving institutions, and especially governments, should train employees regarding climate change impacts on historic properties.* Given the scope and magnitude of the climate change effects that federal, Tribal, state, and local governments must address, it is understandable that impacts to historic properties may not be prioritized as highly as some other issues. However, it is critical that there be awareness of such impacts and of the importance of addressing them. Raising awareness through proactive training of government staff is essential. Agencies at all levels of government should have opportunities to learn from each other and to share information, strategies, and examples. Notably, it also is important for them to increase their understanding of relevant international approaches to protecting historic properties from, and adapting them to, climate change.

14. *Public-serving institutions should educate the media and the public about climate change impacts on historic properties and what can be done to address them.* The general public needs to be aware of the worldwide climate-related threats to historic properties and the adaptation and mitigation options that might help to address those threats. Consciousness raising efforts are needed. Likewise, there needs to be outreach to explain how environmental review processes, including section 106 review, provide opportunities for the public to comment on the climate dimensions of projects as they arise. Such educational efforts are important to help ensure the public can effectively advocate for protecting historic properties of importance to them.

Collaboration

15. *Cooperative efforts across agencies, between levels of government, and within communities are critically important.* The impacts of climate change on historic properties are so wide-ranging and potentially severe that collaboration among public-serving institutions, including federal, Tribal, state, and local governments, community groups, and nonprofit organizations, is essential. Likewise, collaboration with those in the environmental, infrastructure, transportation, energy, private, and philanthropic sectors will be necessary for progress. Cooperation and forging of partnerships will enhance implementation of each of the principles discussed above. Federal agencies can take a leadership role in this regard through their own collaborative work and by encouraging such work through funding and technical assistance.

Glossary

- *Adaptation:* Adjustment in natural or human systems to a new or changing environment that exploits beneficial opportunities or moderates negative effects. *(U.S. Global Change Research Program Web Site Glossary)*
- *Climate change-related migration:* Migration that can be attributed largely to the slow-onset impacts of climate change on livelihoods owing to shifts in water availability and crop productivity, or to factors such as sea level rise or storm surge. *(White House Report on the Impact of Climate Change on Migration, 2021)*
- *Community-driven relocation:* Moving a community or portions of a community away from a hazard prone area to a new location with lesser exposure to hazards or their impacts. *(Department of Housing and Urban Development's Climate Resilience Implementation Guide: Community Driven Relocation, 2022)*
- *Historic property:* Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian organization and that meet the National Register criteria. *(Protection of Historic Properties, 36 CFR part 800)*
- *Mitigation:* Measures to reduce the amount and speed of future climate change by reducing emissions of heat-trapping gases or removing carbon dioxide from the atmosphere. *(U.S. Global Change Research Program Web Site Glossary)* [To avoid confusion, this policy statement does not employ the

term ''mitigation'' as used in the context of section 106 review, where it means reducing the severity of a project's adverse effects to historic properties.]

• *Resiliency/resilient:* A capability to anticipate, prepare for, respond to, and recover from significant multi-hazard threats with minimum damage to social well-being, the economy, and the environment. *(U.S. Global Change Research Program Web Site Glossary)*

Adopted June 16, 2023.

(End of Document)

Authority: 54 U.S.C. 304102(a).

Dated: July 31, 2023.

Javier Marques,

General Counsel.

[FR Doc. 2023–16569 Filed 8–2–23; 8:45 am]

BILLING CODE 4310–K6–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[OMB Control Number 1653–0051]

Agency Information Collection Activities; Extension of a Currently Approved Collection: Standards To Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance.

DATES: Comments are encouraged and will be accepted until October 2, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1653–0051 in the body of the correspondence, the agency name and Docket ID ICEB–2012–0003. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number ICEB–2012–0003.

FOR FURTHER INFORMATION CONTACT: If you have questions related to this collection please contact: Chelsea Dennis, ICE/OIPE, (202) 423–7456, *chelsea.y.dennis@ice.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comment

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities.

(3) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individual or Households. DHS sets standards for the prevention, detection, and response to sexual abuse in its confinement facilities. For DHS facilities and as incorporated in DHS contracts, these standards require covered facilities to retain and report to the agency certain specified information relating to sexual abuse prevention planning, responsive planning, education and training, and investigations, as well as to collect, retain, and report to the agency certain specified information relating to allegations of sexual abuse within the covered facility.

(4) *An estimate of the total number of respondents:* 1,376,754.

(5) *An estimate of the total public burden (in hours) associated with the collection:* 117,267 annual burden hours.

Dated: July 31, 2023.

Scott Elmore,

ICE Paperwork Reduction Act Officer, OCIO.

[FR Doc. 2023–16567 Filed 8–2–23; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[OMB Control Number 1653–NEW; Docket ID ICEB–2023–0007]

Agency Information Collection Activities; New Information Collection; Comment Request; Non-E-Verify Remote Document Examination Pilot 1

AGENCY: Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) invites the public to comment upon this proposed new collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding all aspects of the information collection, the categories of respondents, the estimated burden (*e.g.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted until October 2, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1653–NEW in the body of the correspondence, the agency name and Docket ID ICEB–2023–0007. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number ICEB–2023–0007.

FOR FURTHER INFORMATION CONTACT: Sharon Hageman, Deputy Assistant Director, Office of Regulatory Affairs and Policy, U.S. Immigration and Customs Enforcement, Department of Homeland Security, telephone number 202–732–6960 (This is not a toll-free number. Comments are not accepted via telephone message.)

SUPPLEMENTARY INFORMATION:

Background

Section 274A of the Immigration and Nationality Act (INA), as amended, prohibits the knowing employment of

unauthorized individuals and the hiring of individuals without first verifying their employment authorization and identity. Section 274B of the INA prohibits employment discrimination based on citizenship, immigration status, and national origin, in hiring, firing, and during the employment eligibility verification process. All employers must examine the documentation presented by individuals seeking to establish identity and employment authorization for the purpose of completing the Form I–9, Employment Eligibility Verification (Form I–9). On July 25, 2023, DHS published a final rule, *Optional Alternatives to the Physical Document Examination Associated with Employment Eligibility Verification (Form I–9).* 88 FR 47990. Under the rule, the Secretary of Homeland Security (the Secretary) may, as an optional alternative to the in-person physical document examination (physical examination) method employers have followed as part of the Form I–9 process set forth in current regulations, consistent with applicable law and via notice published in the **Federal Register**, authorize alternative documentation examination procedures. The Secretary may authorize alternative documentation examination procedures with respect to some or all employers as part of a pilot program, or upon a determination that such procedures offer an equivalent level of security, or as a temporary measure to address a public health emergency declared by the Secretary of Health and Human Services (pursuant to Section 319 of the Public Health Service Act) or a national emergency declared by the President (pursuant to Sections 201 and 301 of the National Emergencies Act). To date, the Secretary has authorized one alternative procedure under the rule, upon a determination that such procedure offers an equivalent level of security. 88 FR 47749. This Notice seeks comment on a potential pilot procedure under the rule.

Proposed Pilot

Through the Non-E-Verify Remote Document Examination Pilot 1 (Pilot), ICE seeks to identify the potential effects of a specific Pilot procedure on the security of the employment verification system. ICE will evaluate a range of potential effects on system integrity, (such as error or fraud rates and discrimination, between physical examination of the Form I–9 documents and remote examination pursuant to the Pilot procedure. The Pilot procedure would resemble the authorized alternative procedure identified above (including with respect to remote document inspection, document retention, optionality, and protections against discrimination). The Pilot procedure would not, however, be available to E-Verify employers, because DHS has authorized an alternative procedure involving the use of E-Verify. The Pilot may be open to most employers but limited to employers below a specified size threshold (*e.g.,* 500 employees).

This information collection would involve a form to be completed by employers requesting to participate in the Pilot. ICE would regularly [1] request feedback data (*e.g.,* number of new hires, number of employees who requested to have a physical inspection, challenges associated with the Pilot procedure) from participating employers.

Participating employers would be required to examine and retain electronic copies that are clear and legible of all supporting documentation provided by individuals seeking to establish identity and employment authorization for the Form I–9 process. Employers may be required to undertake other measures to improve the security of the Pilot procedure. For instance, participating employers may be required to undertake fraudulent document detection and anti-discrimination training. In addition, for those employees who work onsite (*i.e.,* at the same physical worksite as a supervisor or the official completing the Form I–9) or in a hybrid capacity, the employer may be prohibited from using the pilot procedure, or provided a timeframe, following the initial remote document examination, during which to physically examine the employee's Form I–9 documents and compare such documents to the copies on file.

The INA specifically authorizes DHS, the Immigrant and Employee Rights Section of the Department of Justice's Civil Rights Division, and the Department of Labor to inspect Forms I–9, including any copies of employee documents retained with the corresponding Form I–9.[2] Pilot participants, like all employers, would be subject to audits and investigations. DHS would monitor and evaluate data and information from ICE audits conducted to assess any measurable impacts to system integrity between the employers that use the alternative procedure and those that continue with physical document inspection.

[1] The burden estimate below assumes two requests annually per participating employer.

[2] *See* 8 U.S.C. 1324a(b)(3).

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering ICEB–2023–0007 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

As part of this feedback, DHS welcomes and will consider input on all aspects of the pilot's potential terms and conditions, as described above.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Collection:* Non-E-Verify Remote Document Examination Pilot 1.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* New ICE Form; ICE.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will be employers in the public, private, and not-for-profit sectors, who volunteer to participate in the pilot. These employers will submit responses to the New ICE Form. Up to twice a year, ICE may request feedback data (*e.g.,* number of new hires, number of employees who requested to have a physical inspection, challenges associated with the Pilot procedure) from participating employers. A subset of the employers may take undertake fraudulent document training. Finally, employers participating in the Pilot must retain records as stipulated by the terms of the Pilot.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

Collection type	Number of respondents	Number of annual responses per respondent	Number of annual responses	Time per response (hours)	Average annual hours
Questionnaire	100,000	0.333	33,333	0.5	16,667
Feedback Data	100,000	2	200,000	0.5	100,000
Training	50,000	1	50,000	2	100,000
Document Retention	100,000	10	1,000,000	0.083	83,333
Average Annual Hours					300,000

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 300,000 hours.

(7) *An estimate of the total public burden (in cost) associated with the collections:* There are no capital costs or operating and maintenance costs associated with this collection of information. The information for this collection may be submitted and retained electronically.

Sharon Hageman,

Deputy Assistant Director, Office of Regulatory Affairs and Policy, U.S. Immigrations and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2023–16589 Filed 8–2–23; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[234A2100DD/AAKC001030/ A0A501010.999900]

HEARTH Act Approval of Cocopah Tribe of Arizona Business Site Leasing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Cocopah Tribe of Arizona's Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into business leases without further BIA approval.

DATES: BIA issued the approval on July 26, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Carla Clark, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *carla.clark@bia.gov,* (702) 484–3233.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal Leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Cocopah Tribe of Arizona.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448

U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self-government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Cocopah Tribe of Arizona.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023–16498 Filed 8–2–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AK_FRN_MOU4500171910; AA–10725, AA–10982, AA–11024, AA–11025, AA–11141, AA–12593, AA–12619, AA–12621]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: The Bureau of Land Management (BLM) hereby provides constructive notice that it will issue an appealable decision approving conveyance of the surface and subsurface estates in certain lands to Chugach Alaska Corporation, an Alaska Native regional corporation, pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA), as amended.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the time limits set out in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may obtain a copy of the decision from the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513–7504.

FOR FURTHER INFORMATION CONTACT: Abby Muth, Land Law Examiner, BLM Alaska State Office, 907–271–3345 or *amuth@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: As required by 43 CFR 2650.7(d), notice is hereby given that the BLM will issue an appealable decision to Chugach Alaska Corporation. The decision approves conveyance of the surface and subsurface estates in certain lands pursuant to ANCSA (43 U.S.C. 1601, *et seq.*), as amended.

The lands are located within the Chugach National Forest, in the following townships, and aggregate 140.57 acres: T. 16 S., R. 6 W., Copper River Meridian; T. 2 N., R. 6 E., Seward Meridian (SM); T. 10 N., R. 7 E., SM; T. 11 N., R. 7 E., SM; T. 2 N., R. 9 E., SM; T. 7 N., R. 9 E., SM; T. 5 N., R. 10 E., SM; T. 9 N., R. 10 E., SM; T. 9 N., R. 11 E., SM. The decision addresses public access easements, if any, to be reserved to the United States pursuant to Sec. 17(b) of ANCSA (43 U.S.C. 1616(b)), in the lands approved for conveyance.

The BLM will also publish notice of the decision once a week for four consecutive weeks in ''The Anchorage Daily News'' newspaper.

Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until September 5, 2023 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have

waived their rights. Notices of appeal transmitted by facsimile will not be accepted as timely filed.

Abby Muth,

Land Law Examiner, Adjudication Section.

[FR Doc. 2023–16522 Filed 8–2–23; 8:45 am]

BILLING CODE 4331–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AK_FRM_MO4500171438; AA–12223, AA–12225, AA–12237, AA–12241, AA–12243, AA–12249]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: The Bureau of Land Management (BLM) hereby provides constructive notice that it will issue an appealable decision approving conveyance of the surface estate in certain lands to The Aleut Corporation, an Alaska Native regional corporation, pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA). The lands approved for conveyance lie entirely within the Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge. As provided by ANCSA, ownership of the subsurface estate in the same lands will be retained by the United States.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the time limits set out in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may obtain a copy of the decision from the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513–7504.

FOR FURTHER INFORMATION CONTACT: Rebecca Curtiss, Land Law Examiner, BLM Alaska State Office, 907–271–5066 or *rcurtiss@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: As required by 43 CFR 2650.7(d), notice is hereby given that the BLM will issue an appealable decision to The Aleut Corporation. The decision approves conveyance of surface estate in certain lands pursuant to ANCSA (43 U.S.C. 1601, *et seq.*), as amended. Ownership of the subsurface estate will be retained by the United States.

The lands aggregate 62.49 acres and are located within the Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge in the following townships: T. 67 S., R. 88 W., Seward Meridian (SM); T. 70 S., R. 108 W., SM; T. 69 S., R. 109 W., SM; T. 77 S., R. 121 W., SM; T. 78 S., R. 128 W., SM; T. 79 S., R. 128 W., SM; T. 82 S., R. 135 W., SM.

The decision addresses public access easements, if any, to be reserved to the United States pursuant to Sec. 17(b) of ANCSA (43 U.S.C. 1616(b)), in the lands approved for conveyance.

The BLM will also publish notice of the decision once a week for four consecutive weeks in ''The Bristol Bay Times & The Dutch Harbor Fisherman'' newspaper.

Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail, which is not certified, return receipt requested, shall have until September 5, 2023 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by facsimile will not be accepted as timely filed.

Rebecca Curtiss,

Land Law Examiner, Adjudication Section.

[FR Doc. 2023–16520 Filed 8–2–23; 8:45 am]

BILLING CODE 4331–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AK_FRN_MO4500171891; AA–10046, AA–10183, AA–10196, AA–10199, AA–10210, AA–10231, AA–10232, AA–10357, AA–10358, AA–10361, AA–10371, AA–10392, AA–10397, AA–10403, AA–10417, AA–11274]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: The Bureau of Land Management (BLM) hereby provides constructive notice that it will issue an appealable decision approving conveyance of the surface and subsurface estates in certain lands to Calista Corporation, an Alaska Native regional corporation, pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA), as amended.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the time limits set out in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may obtain a copy of the decision from the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: Rolando R. Masvidal, Land Law Examiner, BLM Alaska State Office, 907–271–4687, or *rmasvidal@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: As required by 43 CFR 2650.7(d), notice is hereby given that the BLM will issue an appealable decision to Calista Corporation. The decision approves conveyance of the surface and subsurface estates in certain lands pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*), as amended. The lands are located within the Yukon Delta National Wildlife Refuge, in the following townships, and aggregate 1,261.43 acres: T. 5 N., R. 62 W., Seward Meridian (SM); T. 7 N., R. 62 W., SM; T. 15 N.,

R. 64 W., SM; T. 13 N., R. 66 W., SM; T. 12 N., R. 67 W., SM; T. 15 N., R. 68 W., SM; T. 16 N., R. 69 W., SM; T. 12 N., R. 70 W., SM; T. 18 N., R. 71 W., SM; T. 5 N., R. 75 W., SM; T. 22 N., R. 87 W., SM; T. 22 N., R. 88 W., SM; T. 22 N., R. 89 W., SM; T. 20 N., R. 91W., SM.

The decision addresses public access easements, if any, to be reserved to the United States pursuant to Sec. 17(b) of ANCSA (43 U.S.C. 1616(b)), in the lands described above. The BLM will also publish notice of the decision once a week for four consecutive weeks in ''The Delta Discovery'' newspaper. Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail, which is not certified, return receipt requested, shall have until September 5, 2023 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by facsimile will not be accepted as timely filed.

Rolando R. Masvidal,

Land Law Examiner, Adjudication Section.

[FR Doc. 2023–16528 Filed 8–2–23; 8:45 am]

BILLING CODE 4331–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AK_FRN_MO 4500171893; AA–12255, AA–12268, AA–12269, AA–12270, AA–12285, AA–12286, AA–12287, AA–12288, AA–12289, AA–12290]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: The Bureau of Land Management (BLM) hereby provides constructive notice that it will issue an appealable decision approving conveyance of the surface estate in certain lands to The Aleut Corporation, an Alaska Native regional corporation, pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA), as amended. The lands approved for conveyance lie entirely within the Izembek National Wildlife Refuge and the Alaska Peninsula Unit of the Alaska Maritime National Wildlife Refuge. As provided by ANCSA, ownership of the subsurface estate in the same lands will be retained by the United States.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the time limits set out in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may obtain a copy of the decision from the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: Rolando R. Masvidal, Land Law Examiner, at BLM Alaska State Office, 907–271–4687, or *rmasvidal@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: As required by 43 CFR 2650.7(d), notice is hereby given that the BLM will issue an appealable decision to The Aleut Corporation. The decision approves conveyance of the surface estate in certain lands pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*), as amended. Ownership of the subsurface estate will be retained by the United States. The lands are located within the Izembek National Wildlife Refuge and the Alaska Peninsula Unit of the Alaska Maritime National Wildlife Refuge, in the following townships, and aggregate 370.44 acres: T. 60 S., R. 66 W., Seward Meridian (SM); T. 61 S., R. 66 W., SM; T. 61 S., R. 67 W., SM; T. 55 S., R. 86 W., SM; T. 56 S., R. 86 W., SM; T. 55 S., R. 87 W., SM.

The decision addresses public access easements, if any, to be reserved to the United States pursuant to Sec. 17(b) of ANCSA (43 U.S.C. 1616(b)), in the lands described above.

The BLM will also publish notice of the decision once a week for four consecutive weeks in ''The Bristol Bay Times & The Dutch Harbor Fisherman'' newspaper. Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail, which is not certified, return receipt requested, shall have until September 5, 2023 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by facsimile will not be accepted as timely filed.

Rolando R. Masvidal,

Land Law Examiner, Adjudication Section.

[FR Doc. 2023–16525 Filed 8–2–23; 8:45 am]

BILLING CODE 4331–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AK_FRM_MO 4500171439; AA–12277, AA–12278]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: The Bureau of Land Management (BLM) hereby provides constructive notice that it will issue an appealable decision approving conveyance of the surface and subsurface estates in certain lands to The Aleut Corporation, an Alaska Native regional corporation, pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA). The lands approved for conveyance lie entirely within the Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the time limits set out in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may obtain a copy of the decision from the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513–7504.

FOR FURTHER INFORMATION CONTACT: Rebecca Curtiss, Land Law Examiner,

BLM Alaska State Office, 907–271–5066 or *rcurtiss@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: As required by 43 CFR 2650.7(d), notice is hereby given that the BLM will issue an appealable decision to The Aleut Corporation. The decision approves conveyance of surface and subsurface estates in certain lands pursuant to ANCSA (43 U.S.C. 1601, *et seq.*), as amended.

The lands aggregate 25.81 acres and are located within the Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge in the following townships: T. 57 S., R. 80 W., Seward Meridian (SM); T. 59 S., R. 83 W., SM; and T. 60 S., R. 83 W., SM. The decision addresses public access easements, if any, to be reserved to the United States pursuant to Sec. 17(b) of ANCSA (43 U.S.C. 1616(b)), in the lands approved for conveyance.

The BLM will also publish notice of the decision once a week for four consecutive weeks in ''The Bristol Bay Times & The Dutch Harbor Fisherman'' newspaper.

Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail, which is not certified, return receipt requested, shall have until September 5, 2023 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by facsimile will not be accepted as timely filed.

Rebecca Curtiss,

Land Law Examiner, Adjudication Section.

[FR Doc. 2023–16521 Filed 8–2–23; 8:45 am]

BILLING CODE 4331–10–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036306; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of Justice, Federal Bureau of Investigation, El Paso, TX

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of Justice, Federal Bureau of Investigation (FBI El Paso Field Office), has completed an inventory of human remains and associated funerary objects and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any Indian Tribe. The human remains and associated funerary objects were removed from Hudspeth County, TX.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after September 5, 2023.

FOR FURTHER INFORMATION CONTACT: Special Agent (SA) Jeffrey R. Reisinger, FBI El Paso Field Office, 660 S Mesa Hills Drive, Suite 3000, El Paso, TX 79912, telephone (915) 832–5383 (desk), email *jrreisinger@fbi.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under the Native American Graves Protection and Repatriation Act (NAGPRA). The determinations in this notice are the sole responsibility of the FBI El Paso Field Office. 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 FBI El Paso Field Office.

Description

Human remains representing one individual were removed from Hudspeth County, TX. In August of 2007, following a rainstorm, the human remains were exposed on private land approximately 12 miles northeast of Sierra Blanca. Children who were playing in the area discovered the exposed skeletal remains and the Hudspeth County Sheriff's Office was contacted. That office contacted the Texas Rangers, who initially assessed the scene and then contacted the FBI. FBI El Paso Evidence Response Team (ERT) arrived on scene, took photographs, and collected the human remains and objects. The human remains and funerary objects were placed into the Evidence Control Room before being sent to Quantico, Virginia for analysis. The analysis determined the human remains to be ''Ancient remains.'' Based upon anthropological and archeological information, more likely than not, these human remains belong to an individual of Native American descent. The human remains and funerary objects have remained in the Evidence Control Room of the FBI Field Office in El Paso since being returned from Quantico, Virginia. The seven associated funerary objects are three pottery sherds and four stone tool fragments.

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 final judgment of the Indian Claims Commission.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the FBI El Paso Field Office has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The seven 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.
- 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 and associated funerary objects described in this notice were removed from the aboriginal land of the Apache Tribe of Oklahoma; Comanche Nation, Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Tonkawa Tribe of Indians of Oklahoma; Wichita and Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma; and the Ysleta del Sur Pueblo.

Requests for Disposition

Written requests for disposition of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **FOR FURTHER INFORMATION CONTACT**. 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 and associated funerary objects described in this notice to a requestor may occur on or after September 5, 2023. If competing requests for disposition are received, the FBI El Paso Field Office must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The FBI El Paso Field Office 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 and 10.11.

Dated: July 26, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–16485 Filed 8–2–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036307; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: The Andy Warhol Museum, Pittsburgh, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), The Andy Warhol Museum (AWM) intends to repatriate a certain cultural item that meets the definition of an object of cultural patrimony and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural item was removed from Moody County, SD.

DATES: Repatriation of the cultural item in this notice may occur on or after September 5, 2023.

ADDRESSES: Matt Gray, Director of Archives, The Andy Warhol Museum, 117 Sandusky Street, Pittsburgh, PA 15212, telephone (412) 237–8363, email *graym@warhol.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 AWM. 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 AWM.

Description

The one cultural item was removed from Moody County, SD. The item was discovered by AWM staff on April 12, 2018, while processing a large donation of Andy Warhol's personal archive received from The Andy Warhol Foundation for the Visual Arts, Inc. On May 16, 2018, it was identified as a Native American bundle, and on July 17, 2018, it was included in a summary. The bundle was inspected by two staff at the Carnegie Museum of Natural History (CMNH), Gretchen Anderson, Head of the Section of Conservation, and Deborah Harding, Collection Manager in the Section of Anthropology. The bundle consists of a large adult eagle wrapped in an embroidered wool shawl, patterned silk, linen, and multiple layers of patterned cotton. Most of the fabrics used in the bundle had been previously worn. The outermost layers of the bundle are wrapped in plain cotton. Hand-stitched wool stroud and silk ribbons are wrapped around the eagle's chest, silk ribbons are tied around its ankles, and a runtee shell is tied around its neck. The one bundle is an object of cultural patrimony.

Cultural Affiliation

The cultural item in this notice is 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: expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, AWM has determined that:

- The one cultural item described above has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural item and the Flandreau Santee Sioux Tribe of South Dakota.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item 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 item in this notice to a requestor may occur on or after September 5, 2023. If competing requests for repatriation are received, AWM 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. AWM 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: July 26, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–16486 Filed 8–2–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036301; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Field Museum, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Field Museum 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 Bartow County, GA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after September 5, 2023.

ADDRESSES: Helen Robbins, Field Museum, 1400 S Lake Shore Drive, Chicago, IL 60605–2496, telephone (312) 665–7317, email *hrobbins@fieldmuseum.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 Field Museum. 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 Field Museum.

Description

Human remains representing, at minimum, two individuals were removed from Bartow County, GA. In 1926, William K. Moorehead removed human remains and associated funerary objects from Etowah Mounds, and possibly a site a little south of Etowah Mounds. The Field Museum purchased the human remains and funerary objects from Moorehead in 1926. The human remains belong to an infant and a fetus, both of unknown sex. The two associated funerary objects are one lot consisting of shell beads and one ceramic pot.

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: anthropological, archeological, geographical, and linguistic.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Field Museum has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The two 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 Alabama-Quassarte Tribal Town; Kialegee Tribal Town; Poarch Band of Creek Indians; The Muscogee (Creek) Nation; and the Thlopthlocco Tribal Town.

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 September 5, 2023. If competing requests for repatriation are received, the Field Museum 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 Field Museum 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: July 26, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–16481 Filed 8–2–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036304; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Department of the Interior, Bureau of Land Management, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Bureau of Land Management (BLM Alaska) 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 a site near Galena in the Yukon-Koyukuk Census Area, Alaska.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after September 5, 2023.

ADDRESSES: Robert E. King, Bureau of Land Management, 222 W 7th Avenue, #13, Anchorage, AK 99513, telephone (907) 271–5510, email *r2king@blm.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 BLM Alaska. 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 BLM Alaska.

Description

In 1935, human remains representing one individual were removed from the Old Louden graveyard in the middle Yukon Valley, about 10 miles southeast of Galena, AK. The human remains, which are estimated to be over 150 years old, were removed by Frederica de Laguna, who at that time was associated with the University of Pennsylvania

Museum of Archaeology and Anthropology in Philadelphia, PA. The human remains were brought back to the Museum, where they are currently being held [PM# 35–21–24] along with associated funerary objects. The four associated funerary objects are two lots consisting of shell beads (about 70+ total) [PM# 35–21–25, PM# 35–21–26], one stone ''flint'' blade [PM# 35–21–27], and one lot consisting of fragments of an iron blade with wooden handle [PM#35–21–28].

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: archeological and oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, BLM Alaska has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The four 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 described in this notice and the Galena Village (a.k.a. Louden Village).

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 September 5, 2023. If competing requests for repatriation are received, BLM Alaska 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. BLM Alaska 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: July 26, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–16483 Filed 8–2–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036302; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Field Museum, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Field Museum 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 Chatham County, GA, and McIntosh County, GA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after September 5, 2023.

ADDRESSES: Helen Robbins, Field Museum, 1400 S Lake Shore Drive, Chicago, IL 60605–2496, telephone (312) 665–7317, email *hrobbins@fieldmuseum.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 Field Museum. 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 Field Museum.

Description

Human remains representing, at minimum, one individual were removed from Chatham County, GA. In 1896 or 1897, Clarence B. Moore removed human remains from Mound D on Ossabaw Island. The Field Museum received the human remains from Moore in 1897, via an exchange. The human remains belong to a possible adult whose sex is unknown. No associated funerary objects were present.

Two associated funerary objects were removed from McIntosh County, GA. In 1896 or 1897, Clarence B. Moore removed one associated funerary object from Dumoussay's Field, on Sapelo Island, and one associated funerary object from the north end of Creighton Island. The Field Museum received the funerary objects from Moore in 1897, via an exchange. The two associated funerary objects are two burial urns.

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: anthropological, archeological, geographical, and linguistic.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Field Museum has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The two 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 and are reasonably believed to have been made exclusively for burial purposes or to contain human remains.
- 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 Alabama-Quassarte Tribal Town; Kialegee Tribal Town; Poarch Band of Creek Indians; The Muscogee (Creek) Nation; and the Thlopthlocco Tribal Town.

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 September 5, 2023. If competing requests for repatriation are received, the Field Museum 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 Field Museum 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: July 26, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–16482 Filed 8–2–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036305; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: 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 University of California, Berkeley intends to repatriate a certain cultural item that meets the definition of an unassociated funerary object and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural item was removed from site CA-Sac-159, Sacramento County, CA.

DATES: Repatriation of the cultural item in this notice may occur on or after September 5, 2023.

FOR FURTHER INFORMATION CONTACT: Alexandra Lucas, Repatriation Coordinator, Government and Community Relations (Chancellor's Office), University of California, Berkeley, 200 California Hall, Berkeley, CA 94720, telephone (510) 570–0964, email *nagpra-ucb@berkeley.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under the Native American Graves Protection and Repatriation Act (NAGPRA). The determinations in this notice are the sole responsibility of 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 summary or related records held by the University of California, Berkeley.

Description

The one unassociated funerary object was removed from site CA-Sac-159 in Sacramento County, CA, by Robert Fleming Heizer and a field crew, and appropriated by the University of California, Berkeley's Lowie Museum of Anthropology (now known as the Phoebe A. Hearst Museum) in 1938. The one unassociated funerary object is a clamshell disc bead.

Cultural Affiliation

The cultural item in this notice is 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: tribal traditional, linguistic, archeological, and geographical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the University of California, Berkeley has determined that:

- The one unassociated funerary object described above is 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 item and the Wilton Rancheria, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the Responsible Official identified in **FOR FURTHER INFORMATION CONTACT**. 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 item in this notice to a requestor may occur on or after September 5, 2023. If competing requests for repatriation are received, the University of California, Berkeley must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item is considered a single request and not competing requests. 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 10.8, 10.10, and 10.14.

Dated: July 26, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–16484 Filed 8–2–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–36283; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before July 22, 2023, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by August 18, 2023.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before July 22, 2023. Pursuant to section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers

Key: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

INDIANA

Carroll County

North Street Viaduct, North St. overpass at US 421/39/Washington St., Delphi, SG100009295

Sycamore Row, Old IN 29 from Deer Creek south approx. 1,300 ft to IN 29, Deer Creek vicinity, SG100009297

Kosciusko County

Warner House-Warner Schoolhouse, Northwest corner of North and East Sts., North Webster, SG100009298

Marion County

Bluff Road Historic District (German Market Garden Farms of Perry Township (Marion County), Indiana, 1867–1972 MPS), Roughly on both sides of Bluff Rd. from Sprague St. to 4724 Bluff Rd., Indianapolis, MP100009292

Miami County

Godfroy's Addition Historic District, Roughly bounded by Ewing, 6th, Water, Canal, and Wabash Sts., and Clay St. between Main and 2nd Sts., Peru, SG100009293

Peru Westside Historic District, Roughly bounded by 6th, Miami, 3rd, and Lafayette Sts., Peru, SG100009296

Porter County

Hour Glass Cottage, 8 Lupine Ln., Ogden Dunes, SG100009294

MARYLAND

Baltimore Independent City

Park Heights Historic District, Roughly bounded by Northern Pkwy., Greenspring Ave., the Park Circle Historic District, and the Western MD rail line, Baltimore, SG100009276

Cecil County

Worsell Manor, 555 Worsell Manor Rd., Warwick, SG100009275

MASSACHUSETTS

Bristol County

Ashworth Brothers Mill, 89 Globe Mills Ave., Fall River, SG100009284

Essex County

Lynn Item Building, 38–54 Exchange St., Lynn, SG100009282

Middlesex County

John Winthrop Chambers, The, 78–80 Porter Rd., Cambridge, SG100009286

Suffolk County

Elm Hill Avenue-Georgia Street-Cheney Street Historic District, Elm Hill Ave, Cheney, Georgia, Hartwell, Homestead, Maple, Montana, Pleasanton, and Ruthven Sts., Boston, SG100009285

Worcester County

Worcester Young Women's Christian Association, 6 Chatham St., Worcester, SG100009287

MICHIGAN

Alpena County

Besser, Herman and Hattie (Ely), House, 403 South 2nd Ave., Alpena, SG100009278

NEW YORK

Bronx County

Casita Rincón Criollo (Puerto Rican Casitas of New York City MPS), 749–753 Brook Ave., Bronx, MP100009280

Columbia County

Fairview Manor, 20 NY 9H, Claverack, SG100009291

OHIO

Butler County

Shuler & Benninghofen Woolen Mill, 2350 Pleasant Ave., Hamilton, SG100009299

Hamilton County

Regal Theater, 1201 Linn St., Cincinnati, SG100009302

Montgomery County

Sears, Roebuck and Company, 5200 Salem Ave., Trotwood, SG100009303

PENNSYLVANIA

Philadelphia County

Fairelawn, 30 Pelham Rd., Philadelphia, SG100009301

TEXAS

El Paso County

Na Hlu Hli Tui (Old Village), Address Restricted, El Paso vicinity, MP100009300

A request for removal has been made for the following resources:

FLORIDA

Duval County

Catherine Street Fire Station, 14 Catherine St., Jacksonville, OT72000309

Woman's Club of Jacksonville, 861 Riverside Ave., Jacksonville, OT92001505

Buckman and Ulmer Building (Downtown Jacksonville MPS), 29–33 West Monroe St., Jacksonville, OT92001694

South Atlantic Investment Corporation Building (Downtown Jacksonville MPS), 35–39 West Monroe St., Jacksonville, OT92001699

St. Johns County

Hastings Community Center, 401 North Main St., Hastings, OT07000057

Volusia County

Anderson, John, Lodge (Historic Winter Residences of Ormond Beach, 1878–1925 MPS), 71 Orchard Ln., Ormond Beach, OT88001717

Nominations submitted by Federal Preservation Officers:

The State Historic Preservation Officer reviewed the following nominations and responded to the Federal Preservation Officer within 45 days of receipt of the nominations and supports listing the properties in the National Register of Historic Places.

MISSOURI

Greene County

Wilson's Creek National Battlefield (Additional Documentation), 6424 West Farm Rd. 182, Republic vicinity, AD66000113

UTAH

San Juan County

Natural Bridges National Monument Visitor Center (National Park Service Mission 66 Era Resources MPS), Natural Bridges Entrance Rd./UT 275, Natural Bridges NM, MP100009283

Authority: Section 60.13 of 36 CFR part 60.

Dated: July 26, 2023.

Sherry A. Frear,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2023–16548 Filed 8–2–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036308; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Rhode Island, South Kingstown, RI, and Connecticut College, New London, CT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Rhode Island (URI) and Connecticut College (CC) have completed an inventory of human remains and have 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 New London County, CT.

DATES: Repatriation of the human remains in this notice may occur on or after September 5, 2023.

FOR FURTHER INFORMATION CONTACT: Fiona Jones, URI, 232 Chafee Hall, Kingston, RI 02881, email *fionaj@uri.edu;* and Kristine Bovy, URI, 508 Chafee Hall, Kingston, RI 02881, telephone (401) 874–4143, email *kbovy@uri.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 URI and CC. 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 URI and CC.

Description

Human remains representing, at minimum, one individual were removed from New London County, CT. In March of 1981, during the construction of a soccer field on the campus of Connecticut College, New London, CT, an excavating bulldozer exposed and partly damaged the burial of one individual interred in a substantial shell midden. Dr. Harold Juli, then professor of archeology at Connecticut College, conducted a salvage excavation and recovery of the individual. Dr. Marc Kelley, professor of biological anthropology at URI, was asked to collaborate in osteological research on the recovered individual. The human remains were subsequently transferred to URI. In published reports, this individual is determined to be of Native American descent based on dental morphology, as well as the context of the burial. Fragments of unidentified bone were collected for radiocarbon dating. The results concluded a time range of A.D. 1620±70. There are no associated funerary objects present. (A ''broken sandstone blade fragment'' was noted during excavation, but the object is not in the possession of URI and there is no record of this object ever being transferred to the University; nor is the object in the possession of CC.) URI was not in possession of any relevant documentation, such as geographic context and excavation information; this information was supplied by CC in 2022.

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: archeological, geographical, historical, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, URI and CC have 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 Mashantucket Pequot Indian Tribe and the Mohegan Tribe of Indians of Connecticut.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **FOR FURTHER INFORMATION CONTACT**. 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 September 5, 2023. If competing requests for repatriation are received, URI and CC 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. URI and CC 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: July 26, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–16487 Filed 8–2–23; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–036]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 9, 2023 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. No. 731–TA–1185 (Second Review)(Steel

Nails from the United Arab Emirates). The Commission currently is scheduled to complete and file its determinations and views of the Commission on August 28, 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: August 1, 2023.

Sharon Bellamy,

Acting Supervisory Hearings and Information Officer.

[FR Doc. 2023–16695 Filed 8–1–23; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–037]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 10, 2023 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 701–TA–388–389, and 391 and 731–TA–817, 818, and 821 (Fourth Review)(Cut-to-Length Carbon-Quality Steel Plate (CTL Plate) from India, Indonesia, and South Korea). The Commission currently is scheduled to complete and file its determinations and views of the Commission on August 18, 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: August 1, 2023.

Sharon Bellamy,

Acting Supervisory Hearings and Information Officer.

[FR Doc. 2023–16694 Filed 8–1–23; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–693 and 731–TA–1629–1640 (Preliminary)]

Mattresses From Bosnia and Herzegovina, Bulgaria, Burma, India, Indonesia, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan; Institution of Anti-Dumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–693 and 731–TA–1629–1640 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of mattresses, provided for in subheadings 9404.21.00, 9404.29.10, and 9404.29.90 of the Harmonized Tariff Schedule of the United States, from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan that are alleged to be sold in the United States at less than fair value and imports of mattresses from Indonesia that are alleged to be subsidized by the Government of Indonesia. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach preliminary determinations in antidumping and countervailing duty investigations in 45 days, or in this case by September 11, 2023. The Commission's views must be transmitted to Commerce within five business days thereafter, or by September 18, 2023.

DATES: July 28, 2023.

FOR FURTHER INFORMATION CONTACT: Jordan Harriman (202–205–2610), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to petitions filed on July 28, 2023, on behalf of Brooklyn Bedding LLC, Phoenix, Arizona; Carpenter Company, Richmond, Virginia; Corsicana Mattress Company, Dallas, Texas; Future Foam, Inc., Council Bluffs, Iowa; FXI, Inc., Radnor, Pennsylvania; Kolcraft Enterprises, Inc., Chicago, Illinois; Leggett & Platt, Incorporated, Carthage, Missouri; Serta Simmons Bedding, Inc., Doraville, Georgia; Southerland Inc., Antioch, Tennessee; Tempur Sealy International, Inc., Lexington, Kentucky; the International Brotherhood of Teamsters, Washington, DC; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, Washington, DC.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and

countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Office of Investigations will hold an in-person staff conference in connection with the preliminary phase of these investigations beginning at 9:30 a.m. on August 18, 2023. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before 5:15 p.m. on August 16, 2023. Please provide an email address for each conference participant in the email. Information on conference procedures, format, and participation will be available on the Commission's Public Calendar. A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before 5:15 p.m. on August 23, 2023, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties shall file written testimony and supplementary material in connection with their presentation at the conference no later than noon on August 17, 2023. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 31, 2023.

Sharon Bellamy,

Acting Supervisory Hearings and Information Officer.

[FR Doc. 2023–16571 Filed 8–2–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Partial Consent Decree Under the Clean Water Act and the Pipeline Safety Laws

On July 31, 2023, the Department of Justice lodged a proposed partial consent decree with the United States District Court for the District of North Dakota in the lawsuit entitled *United States of America and State of North Dakota* v. *Belle Fourche Pipeline Company,* Civil Action No. 22–00089–DLH–CRH (the ''North Dakota lawsuit''). The proposed partial consent decree would also resolve a lawsuit in the District of Montana entitled *United States of America* v. *Bridger Pipeline LLC,* Civil Action No. 22–00043–BLG–SPW (the ''Montana lawsuit'').

The North Dakota lawsuit seeks injunctive relief and civil penalties for violations of the Clean Water Act, the Pipeline Safety Laws, and North Dakota state law arising from the failure of Belle Fourche Pipeline Company's Bicentennial Pipeline approximately 17.4 pipeline miles west of the Skunk Hill station, in Billings County, North Dakota, on or about December 1, 2016, resulting in the discharge of oil into an unnamed tributary to Ash Coulee Creek (the ''Ash Coulee spill''). The Montana lawsuit seeks injunctive relief and civil penalties for violations of the Clean Water Act and the Pipeline Safety Laws arising from the failure of Bridger Pipeline LLC's Poplar Pipeline where it crosses under the Yellowstone River approximately six river miles upstream from Glendive, Montana, on or about January 17, 2015, resulting in the discharge of oil into the Yellowstone River (the ''Yellowstone spill'').

The proposed consent decree requires Defendants to perform injunctive relief and pay a $12,500,000 civil penalty. Entering into and fully complying with the proposed partial consent decree would resolve Defendants' and certain affiliates' past civil liability under the Clean Water Act and Pipeline Safety Laws arising from the Ash Coulee and Yellowstone spills. The proposed partial consent decree would also resolve Defendants' and certain affiliates' past civil liability for violations that could be brought under specific provisions of the Pipeline Safety Laws relating to pipeline control room management. The proposed partial consent decree would not resolve the United States' claim for injunctive relief under the Clean Water Act for remediation of the Ash Coulee spill.

The publication of this notice opens a period for public comment on the partial consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of North Dakota* v. *Belle Fourche Pipeline Company,* D.J. Ref. No. 90–5–1–1–11262/2 and *United States* v. *Bridger Pipeline LLC,* D.J. Ref. No. 90–5–1–1–11262. All comments must be submitted

no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov*.
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

In the case of the Ash Coulee spill, the partial consent decree includes a covenant not to sue by the United States under Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973. Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the partial consent decree may be examined and downloaded at this Justice Department website: *http://www.justice.gov/enrd/consent-decrees*. We will provide a paper copy of the partial consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $14.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–16574 Filed 8–2–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0058]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Investigator Quality Survey—ATF Form 8620.7

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until October 2, 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, contact: Lakisha Gregory, either by mail at Personnel Security Division, U.S. Department of Justice, PSD—Room 1.E.—300, 99 New York Ave. NE, Washington, DC 20226, by email at *Lakisha.Gregory@atf.gov,* or telephone at (202) 648–9260.

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.

Abstract: Persons interviewed by ATF contract investigators as a part of a federal background investigation are randomly selected to voluntarily complete a survey that measures the effectiveness, efficiency, and professionalism of the investigator. Interviewees who provide email addresses during the interviews may be emailed a survey to complete and return to a specific ATF email address. The Information Collection (IC) OMB 1140–0058 is being revised to correct a typographical error in the Interview Ratings section. A question from the survey was also removed, as it is not included in the investigator's current line of questioning.

Overview of This Information Collection

1. Type of Information Collection: Revision of a previously approved collection.

2. The Title of the Form/Collection: Investigator Quality Survey.

3. The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number: ATF Form 8620.7.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. Affected public who will be asked or required to respond, as well as the obligation to respond: Individuals or households. The obligation to respond is voluntary.

5. An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: An estimated 2,500 respondents will complete this form once annually, and it will take each respondent approximately 5 minutes to complete their responses.

6. An estimate of the total annual burden (in hours) associated with the collection: The estimated annual public burden associated with this collection is 208 hours, which is equal to 2,500 (total respondents) * 1 (# of response per respondent) * 0.0832 (5 minutes).

7. An estimate of the total annual cost burden associated with the collection, if applicable: $0. There is no new cost associated with this information collection since all requests will be electronically submitted.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response	Total annual burden (hours)
ATF Form 8620.7	2,500	1/annually	2,500	5 min	208

If additional information is required contact: Darwin Arceo, 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.

Dated: July 31, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–16547 Filed 8–2–23; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Notice of Extension of Public Comment Period

On July 11, 2023, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Idaho in the lawsuit entitled *United States of America* v. *J.R. Simplot Company,* Civil Action No. 1:23–cv–322. The United States filed this lawsuit under the Resource Conservation and Recovery Act, the Clean Air Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Emergency Planning and Community Right-To-Know Act. The United States' complaint seeks injunctive relief and civil penalties for alleged violations of these statutes at defendant's phosphoric acid and fertilizer manufacturing plant located near Pocatello, Idaho, known as the Don Plant. The proposed consent decree requires defendant to implement injunctive relief and mitigation measures to address the alleged violations and pay a $1.5 million civil penalty.

On July 17, 2023, the Department of Justice published notice of the proposed consent decree and published a corrected notice on July 25, 2023 (88 FR 47907). The notice started, and the corrected notice re-started, a 30-day period for the submission of comments on the proposed consent decree. The Department of Justice has received requests for an extension of the comment period. In consideration of the requests, notice is hereby given that the Department of Justice has extended the comment period on the proposed consent decree by an additional 30 days, up to and including September 25, 2023.

Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *J.R. Simplot Company,* D.J. Ref. No. 90–7–1–08388/23. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $127.25 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the Appendices and signature pages, the cost is $18.25.

Kathryn C. Macdonald,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–16493 Filed 8–2–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0035]

Ethylene Oxide (EtO) Standard 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 the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Ethylene Oxide (EtO) Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by October 2, 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–2009–0035) 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 EtO Standard (29 CFR 1910.1047) specifies a number of paperwork requirements. The following is a brief description of the collection of information requirements contained in the standard.

The information collection requirements specified in the EtO Standard protect workers from the adverse health effects that may result from occupational exposure to ethylene oxide. The principal information collection requirements in the EtO Standard include conducting worker exposure monitoring, notifying workers of the exposure, implementing a written compliance program, and implementing medical surveillance of workers. Also, the examining physician must provide specific information to ensure that workers receive a copy of their medical examination results. The employer must maintain exposure-monitoring and medical records for specific periods, and provide access to these records by OSHA, the National Institute for Occupational Safety and Health (NIOSH), the affected workers, and their authorized representatives and other designated parties.

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

There is an overall adjustment decrease in burden hours for this ICR. The burden hours have decreased a total of 1,005 hours (from 31,257 hours to 30,252 hours). The adjusted decrease is primarily due to the estimated number of establishments covered by the standard.

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: Ethylene Oxide Standard.

OMB Control Number: 1218–0108.

Affected Public: Business or other for-profits.

Number of Respondents: 2,026.

Number of Responses: 109,708.

Frequency of Responses: Initially, annually, on occasion.

Average Time per Response: Various.

Estimated Total Burden Hours: 30,252.

Estimated Cost (Operation and Maintenance): $5,129,858.

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–2009–0035. 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.

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.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–16565 Filed 8–2–23; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (23–082)]

NASA Federal Advisory Committees; Notice of Establishment Pursuant to the Federal Advisory Committee Act

AGENCY: National Aeronautics and Space Administration.

The Administrator of the National Aeronautics and Space Administration (NASA) has determined that the establishment of the Biological and Physical Sciences Advisory Committee under the Federal Advisory Committee Act (FACA) is necessary and in the public interest in connection with the performance of duties imposed upon NASA by law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Federal Advisory Committee: Biological and Physical Sciences Advisory Committee.

Purpose and Objectives: This committee will advise NASA on scientific matters within the scope of its area of responsibility. Specifically, the scientific matters involve NASA research programs, policies, plans, and priorities pertaining to biological and physical sciences research. It will function solely as an advisory body and will comply fully with the provisions of FACA.

Membership: Membership of this committee and any subordinate groups formed under it shall consist of individual subject matter experts who will serve as Special Government Employees, Regular Government Employees, or Representatives. They

will be chosen from among academia, industry and government with demonstrated and well-recognized knowledge, expertise and experience in fields relevant to their respective scientific disciplines. The membership will be fairly balanced in terms of points of view represented and functions to be performed. Diversity shall be considered as well.

Duration: This is a discretionary committee and is envisioned to be continuing entity subject to charter renewals every two years.

Responsible NASA Official: Dr. Michael Robinson, Designated Federal Officer, Science Mission Directorate, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Robinson, Designated Federal Officer, Science Mission Directorate, NASA Headquarters, Washington, DC 20546; 256–316–5252 or email: *michael.p.robinson@nasa.gov.*

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2023–16531 Filed 8–2–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (23–083)]

NASA Advisory Council; Science Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Science Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Tuesday, August 29, 2023, 9:05 a.m.–2:00 p.m., Pacific Time; and Wednesday, August 30, 2023, 8:30 a.m.–3:00 p.m., Pacific Time.

ADDRESSES: Public attendance will be virtual only. See dial-in and Webex information below under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Ms. KarShelia Kinard, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355 or *karshelia.kinard@nasa.gov.*

SUPPLEMENTARY INFORMATION: As noted above, this meeting is virtual and will take place telephonically and via Webex. Any interested person must use a touch-tone phone to participate in this meeting. The Webex connectivity information for each day is provided below. For audio, when you join the Webex event, you may use your computer or provide your phone number to receive a call back, otherwise, call the U.S. toll conference number listed for each day.

On Tuesday, August 29, the event address for attendees is: *https://jpl.webex.com/jpl/j.php?MTID=m742b75802dbcf587c50a95bc7fed41b2.3.*

The event number is 2763 795 4022 and the event password is NACSC1 (622721 from phones and video systems). If needed, the U.S. toll conference number is 1–510–210–8882 and the access code is 27637954022#622721#.

On Wednesday, August 31, the event address for attendees is: *https://jpl.webex.com/jpl/j.php?MTID=m2b6abac21fe56294e2edab2d93eddde6.*

The event number is 2763 503 8009 and the event password is NACSC2 (622722 from phones and video systems). If needed, the U.S. toll conference number is 1–510–210–8882 and the access code is 27635038009#622722#.

The agenda for the meeting includes the following topics:

—Science Mission Directorate (SMD) Missions, Programs and Activities

It is imperative that the meeting be held on these dates due to the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2023–16553 Filed 8–2–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2023–036]

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: National Archives and Records Administration.

ACTION: Notice and request for comments; information collection request for feedback on agency service delivery.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, we are seeking comment on the development of the following proposed Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery '' for approval under the Paperwork Reduction Act (PRA). This notice announces our intent to submit this collection to OMB for approval and solicits comments on specific aspects for the proposed information collection. Also, we are using this notice to announce our intent to ask OMB to renew our use of the OGIS FOIA Program Compliance Review, NPRC Survey of Customer Satisfaction, National Outreach Program Initiative (NOPI), and Training and Event Evaluations. The public is encouraged to comment.

DATES: NARA will consider all comments it receives by October 2, 2023.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Include NARA–2023__in the title of your response.
- *Email: tamee.fechhelm@nara.gov.* Include NARA–2023-__in the subject line.
- *Fax:* (301) 837 0319. Include NARA–2023-__in the subject line.

Comments submitted in response to this notice may be made available to the public through the internet. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement

should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: This information collection activity provides a means to gather qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with NARA's commitment to improving service delivery. By qualitative feedback, we mean information that provides useful insights into customers' or stakeholders' perceptions and opinions, but not statistical surveys that yield quantitative results that can be generalized to the population of study. Qualitative feedback provides insights into perceptions, experiences, and expectations, provides an early warning of issues with service, or focuses attention on areas where communication, training or changes in operations might improve delivery of products or services. Collecting this information allows for ongoing, collaborative, and actionable communications between NARA and its customers and stakeholders. It also allows us to contribute feedback directly to improving program management.

NARA collects feedback in areas of service delivery such as timeliness, appropriateness, accuracy of information, plain language, courtesy, efficiency, and resolution of issues with service delivery. We use customer feedback to plan efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on NARA's services will be unavailable.

NARA will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collection is voluntary;
- The collection is low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and is low-cost for both the respondents and the Federal Government.
- The collection is non-controversial and does not raise issues of concern to other Federal agencies;
- It is targeted to solicit opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results, but do not fall under the current generic collection.

As a general matter, information collections under this generic collection request will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current Actions: OGIS FOIA Program Compliance Review, NPRC Survey of Customer Satisfaction, National Outreach Program Initiative (NOPI), and Training and Event Evaluations.

Type of Review: Regular.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Estimated Number of Respondents: 25,000.

Below we provide projected average estimates for the next three years:

Average expected annual number of activities: 20.

Average number of respondents per activity: 1,250.

Annual responses: 1.

Frequency of response: Once per request.

Average minutes per response: 30.

Burden hours: 12,500.

Request for Comments: NARA will summarize or include in our request for OMB approval any comments you submit in response to this notice. We invite comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by people to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and use technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments will be available for public inspection at *regulations.gov*.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Sheena Burrell,

Executive for Information Services/CIO.

[FR Doc. 2023–16041 Filed 8–2–23; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–038415; NRC–2023–0090]

Rare Element Resources, Inc.; Upton Pilot Project

AGENCY: Nuclear Regulatory Commission.

ACTION: License; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued Source Material License No. SUA–1603 to Rare Element Resources, Inc. (RER, the licensee) for its possession, and storage of source material in a pilot project for the recovery of rare earth elements (REE). The pilot project, partially funded by the U.S. Department of Energy, is being conducted at a location in Upton, Wyoming to demonstrate the effectiveness of the licensee's proprietary process to recover rare earth element such as Neodymium-Praseodymium (NdPr) and other rare earth oxides at high purity levels. The project is scheduled to operate for approximately one year, processing approximately 1000 tons of material. Waste generated as a result of processing will contain greater than 99 percent of the radioactive components and will be treated and solidified onsite and then shipped offsite to a licensed low level waste facility. The site will be decommissioned at the end of the pilot project.

DATES: This document was published in the **Federal Register** on August 3, 2023

ADDRESSES: Please refer to Docket ID NRC–2023–0090 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0090. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the ''**FOR FURTHER INFORMATION CONTACT**'' section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 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:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. 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.

FOR FURTHER INFORMATION CONTACT: Martha Poston-Brown, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 817–200–1181; email: *Martha.Poston-Brown@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC has issued Source Material License No. SUA–1603 to RER for its possession, and storage of source material in a pilot project for the recovery of REE as a pilot project. RER's pilot project shall be as specified in its license and license application documents as amended and modified.

The record of decision for the NRC decision to approve Rare Element Resources, Inc. license application for the Upton Pilot Project and issue Materials License SUA–1603 is available in Section II of this notice.

The NRC considers the entire publicly available record for a license application to constitute the agency's record of decision. Documents related to the application carry NRC Docket ID NRC–2023–0090. These documents for the Rare Element Resources, Inc. license include the Safety Evaluation Report; and the Environmental Assessment.

Rare Element Resources, Inc.'s request for a source materials license was previously noticed in the **Federal Register** on May 15, 2023, 88 FR 31041, with a notice of an opportunity to request a hearing. No Hearing requests were received. The NRC's Environmental Assessment and Finding of No Significant Impact were also previously noticed in the **Federal Register** on July 27, 2023 (88 FR 484940).

In accordance with 10 CFR 2.390 of the NRC's ''Rules of Practice,'' the details with respect to this action, including the safety evaluation report and accompanying documentation and license, are available electronically at the NRC's Electronic Reading Room at *https://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of the NRC's public documents.

II. Availability of Documents

The documents identified in the following table are available to interested persons through ADAMS.

Document description	ADAMS accession No.
Rare Element Resources Inc, Demonstration License Application, dated May 4, 2022	ML22130A014.
Rare Element Resources, Inc, response to request for supplemental information, dated August 26, 2022	ML22238A107.
Rare Element Resources Inc, resubmittal in response to request for supplemental information, dated September 13, 2022.	ML22258A140.
Rare Element Resources Inc, License Application, Technical Report, and Environmental Report, dated September 30, 2022.	ML22256A319 (Package).
NRC response to request for additional information (RAI) environmental information, dated February 23, 2023	ML23044A097.
NRC response to request additional information (RAI)—technical information, dated March 13, 2023	ML23068A307 (Package).
Rare Element Resources, Inc, response to NRC RAI—environmental information, dated March 21, 2023	ML23082A306.
Rare Element Resources, Inc, response to NRC RAI—safety evaluation, dated April 7, 2023	ML23097A072.
Environmental Assessment for Rare Element Resources, Inc., July 2023	ML23145A039.
Safety Evaluation Report for Rare Element Resources, Inc., July 2023	ML23173A117.
Source Material License for Rare Element Resources, Inc., dated July 27, 2023.	ML23173A116.

Dated: July 31, 2023.

For the Nuclear Regulatory Commission.

Randolph W. Von Till,

Chief, Uranium Recovery and Materials Decommissioning Branch, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2023–16538 Filed 8–2–23; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intent to request extension of OMB approval of an information collection.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget extend approval under the Paperwork Reduction Act of a collection of information under its regulation on Payment of Premiums. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments must be received on or before October 2, 2023 to be assured of consideration.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: paperwork.comments@pbgc.gov.* Refer to Payment of Premiums and/or OMB Control No. 1212–0009 in the subject line.
- *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101.

Commenters are strongly encouraged to submit comments electronically. Commenters who submit comments on paper by mail should allow sufficient time for mailed comments to be received before the close of the comment period.

All submissions received must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and refer to Payment of Premiums and/or OMB Control No. 1212–0009. All comments received will be posted without change to PBGC's website, *http://www.pbgc.gov,* including any personal information provided. Do not submit comments that include any personally identifiable information or confidential business information.

Copies of this information collection may be obtained by writing to Disclosure Division (*disclosure@pbgc.gov*), Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101, or calling 202–229–4040 during normal business hours. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

FOR FURTHER INFORMATION CONTACT: Melissa Rifkin (*rifkin.melissa@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101; 202–326–4400, extension 6563. (If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.)

SUPPLEMENTARY INFORMATION: Section 4007 of title IV of the Employee Retirement Income Security Act of 1974 (ERISA) requires pension plans covered under title IV pension insurance programs to pay premiums to PBGC. All plans covered by title IV pay a flat-rate per-participant premium. An underfunded single-employer plan also pays a variable-rate premium based on the value of the plan's unfunded vested benefits.

Pursuant to section 4007 of ERISA, PBGC has issued its regulation on Payment of Premiums (29 CFR part 4007). Under § 4007.3 of the premium payment regulation, the plan administrator of each pension plan covered by title IV of ERISA is required to file a premium payment and information prescribed by PBGC for each premium payment year. Premium information is filed electronically using ''My Plan Administration Account'' (''My PAA'') through PBGC's website. Under § 4007.10 of the premium payment regulation, plan administrators are required to retain records about premiums and information submitted in premium filings.

Premium filings report (i) the flat-rate premium and related data (all plans), (ii) the variable-rate premium and related data (single-employer plans), and (iii) additional data such as identifying information and miscellaneous plan-related or filing-related data (all plans). PBGC needs this information to identify the plans for which premiums are paid, to verify whether the amounts paid are correct, to help PBGC determine the magnitude of its exposure in the event of plan termination, to help track the creation of new plans and transfer of participants and plan assets and liabilities among plans, and to keep PBGC's insured-plan inventory up to date. That information and the retained records are also needed for audit purposes.

PBGC is intending to update the premium rates, as required by statute, and make conforming, clarifying, and editorial changes to the premium filing instructions. These changes are non-material.

The collection of information under the regulation has been approved through February 29, 2024, under OMB control number 1212–0009. PBGC intends to request that OMB extend its approval of this collection of information for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC estimates that it will receive 31,303 premium filings per year from plan administrators under this collection of information. PBGC further estimates that the annual burden of this collection of information is 13,565 hours and $21,661,676.

PBGC is soliciting public comments to—

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodologies and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

Issued in Washington, DC.

Stephanie Cibinic,

Deputy Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2023–16536 Filed 8–2–23; 8:45 am]

BILLING CODE 7709–02–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Reinstatement of a Previously Approved Collection With Revisions, OPM 1300 (Annual Presidential Management Fellows (PMF) Application)

AGENCY: Office of Personnel Management.

ACTION: 30-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 the following proposed information collection: (ICR) 3206–0082, OPM 1300 (Annual PMF Application). As required by the Paperwork Reduction Act of 1995, as amended by the Clinger-Cohen Act, OPM is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until September 5, 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: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: PMF Program Office at *pmf@opm.gov* or 202–606–1040. Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: The 60-day notice for this information collection was published in the **Federal Register** on April 20, 2023, at 80 FR 24454. No comments specific to this submission were received during the 60-day public comment period. The purpose of this notice is to allow an additional 30 days for public comments on the administration of the annual PMF application. The Office of Management and Budget is particularly interested in 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.

Authority: 5 CFR 362, Executive Order 13562 of December 27, 2010.

Title: OPM 1300, Annual PMF Application.

OMB Number: 3206–0082.

Frequency: Annually.

Affected Public: Current and Recent Graduates.

Number of Respondents: 7,000.

Estimated Time per Respondent: 30 minutes.

Total Burden Hours: 3,500 hours.

U.S. Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2023–16490 Filed 8–2–23; 8:45 am]

BILLING CODE 6325–43–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 3, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 27, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 9 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–201, CP2023–205.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–16478 Filed 8–2–23; 8:45 am]

BILLING CODE 7710–12–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information: National Strategy for a Sustainable Ocean Economy

AGENCY: Office of Science and Technology Policy (OSTP).

ACTION: Notice of request for information (RFI); extension of comment deadline.

SUMMARY: The White House Office of Science and Technology Policy (OSTP) has requested publication of a document on June 29, 2023, concerning a request for information on the National Strategy for a Sustainable Ocean Economy.

FOR FURTHER INFORMATION CONTACT: Deerin Babb-Brott, OSTP Asst. Director for Ocean Policy, (202) 456–3267.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of June 29, 2023, in FR Doc. 2023–13839, on page 42112, in the first column extend the comment date from August 28, 2023 to September 14, 2023 and should read as follows:

DATES: The comment deadline has been extended from August 28, 2023 to September 14, 2023. Responses are due by 11:59 p.m. Eastern Time on September 14, 2023. Submissions received after the deadline may not be taken into consideration.

Dated: July 24, 2023.

Stacy Murphy,

Deputy Chief Operations Officer/Security Officer.

[FR Doc. 2023–15982 Filed 8–2–23; 8:45 am]

BILLING CODE 3270–F2–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98020; File No. SR–CboeEDGA–2023–013]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.10(d) To Allow EdgeRisk Self Trade Protection Between Users That Access the Exchange With Both a Direct Connection and Sponsored Access

July 28, 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 July 26, 2023, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') proposes to amend Exchange Rule 11.10(d) (''EdgeRisk Self Trade Protection (''ERSTP'') Modifiers'') to permit individual firms with Users that access the Exchange through a direct connection and also access the Exchange through Sponsored Access to enable EdgeRisk Self Trade Protection at the firm level. The text of the proposed rule change is provided in Exhibit 5.

The proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.10(d) (''EdgeRisk Self Trade Protection (''ERSTP'') Modifiers'') to add the term ''Multiple Access identifier'' to the definition of ''Unique Identifier'' while also codifying how a User may utilize the Multiple Access identifier. Adding a Multiple Access identifier to ERSTP functionality on the Exchange would allow Users that electronically access the Exchange via their own Membership and Exchange connection(s), as well as Sponsored Participants [5] that access the Exchange via a Sponsored Access [6] arrangement, to enable ERSTP at the firm level, in addition to the current ERSTP functionality based on market participant identifier (''MPID''), Exchange Member identifier, ERSTP Group identifier, or affiliate identifier (any such existing identifier, a ''Unique Identifier'').[7]

Currently, the Exchange's ERSTP functionality prevents certain contra side orders entered by a User [8] from executing, provided that each order has been marked with the same Unique Identifier.[9] ERSTP functionality is currently available only to individual or affiliated Users on the Exchange and cannot be enabled by Users who choose to access the Exchange through both a direct connection as well as through a Sponsored Access arrangement because such Users do not have the same Unique Identifier.

As noted above, there are currently four Unique Identifiers that a User may choose from when submitting an order subject to ERSTP: (i) MPID; [10] (ii) Exchange Member identifier; (iii) ERSTP Group identifier; and (iv) affiliate identifier.[11] ERSTP functionality is optional for Users and is not automatically implemented by the Exchange. Both the buy and the sell order must include the same Unique Identifier in order to prevent an execution from occurring and to effect a cancel instruction.

For example, a User who enables ERSTP functionality using the MPID Unique Identifier will prevent contra side executions between the same MPID from occurring. A User who enables ERSTP using the Exchange Member Unique Identifier would prevent contra side executions between any MPID associated with that User and not just a single MPID. The ERSTP Group Unique Identifier permits Users to prevent matched trades amongst traders or desks within a certain firm but allows orders from outside such group or desk to interact with other firm orders. The affiliate identifier is a Unique Identifier that permits ERSTP to be enabled by firms with a control relationship. The affiliate identifier is only available to Users where: (i) greater than 50% ownership is identified in a User's Form BD; and (ii) the Users execute an affidavit stating that a control relationship exists between the two Users. The Exchange is not proposing any change in functionality for the current Unique Identifiers described above.

The Exchange now proposes to amend Rule 11.10(d) and enhance its existing ERSTP functionality by introducing a fifth Unique Identifier, Multiple Access identifier, which will allow a User to prevent orders entered via its direct connection from interacting with the User's orders entered via Sponsored Access. Currently, ERSTP is only available to individual and affiliated Users. However, there are certain situations (discussed *infra*) in which an individual firm may access the Exchange through different methods (*i.e.,* through a direct connection and through Sponsored Access) and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Exchange Rule 1.5(z). The term ''Sponsored Participant'' shall mean a person which has entered into a sponsorship arrangement with a Sponsoring Member pursuant to Rule 11.3.

[6] *See* Exchange Rule 11.3(a). ''Sponsored Access'' shall mean ''an arrangement whereby a Member permits its customer to enter orders into the 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.''

[7] *See* Exchange Rule 11.10(d).

[8] *See* Exchange Rule 1.5(ee). ''User'' is defined as ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' The ''System'' is ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.'' *See* Exchange Rule 1.5(cc). The term ''Member'' means any registered broker or dealer that has been admitted to membership in the Exchange. *See* Exchange Rule 1.5(n).

[9] *Supra* note 7.

[10] An MPID is a four-character unique identifier that is approved by the Exchange and assigned to a Member for use on the Exchange to identify the Member firm on the orders sent to the Exchange and resulting executions.

[11] *Supra* note 7.

therefore desires to enable ERSTP in order to prevent orders submitted through its direct connection from interacting with those orders submitted through Sponsored Access.

The Multiple Access identifier is similar to the affiliate identifier that is already in place, as it will enable firms that currently enter orders on the Exchange under two different Unique Identifiers to assign the same Unique Identifier to orders entered via its direct connection and to orders entered via Sponsored Access. This would permit the firm to enable ERSTP and prevent contra side orders from executing. While the affiliate identifier requires Users to prove that an affiliate relationship exists between the two Users,[12] the proposed Multiple Access identifier will only require a User to demonstrate: (i) it maintains a Membership on the Exchange through which it directly submits orders to the System; and (ii) it also operates as a Sponsored Participant and submits orders to the System through Sponsored Access. The proposed addition of the Multiple Access identifier does not present any new or novel ERSTP functionality, but rather would extend existing ERSTP functionality to firms that already access the Exchange through multiple formats and therefore have different Unique Identifiers appended to their orders.

By way of example, there are situations where an individual firm would choose to submit orders to the Exchange through different mechanisms. For instance, a firm may employ different trading strategies across different trading desks and choose to send orders for one strategy to the Exchange through a direct connection while the other strategy is sent through Sponsored Access. The proposed functionality would serve as an additional tool that Users may enable in order to assist with compliance with the various securities laws relating to potentially manipulative trading activity such as wash sales [13] and self-trades.[14] Additionally, the proposed functionality would provide firms an additional solution to manage order flow by preventing undesirable executions where the firm submits orders in multiple formats (*i.e.,* direct connection or Sponsored Access). As is the case with the existing risk tools, Users, and not the Exchange, have full responsibility for ensuring that their orders comply with applicable securities rules, laws, and regulations. Furthermore, as is the case with the existing risk settings, the Exchange does not believe that the use of the proposed ERSTP functionality can replace User-managed risk management solutions.

The Exchange is proposing to allow firms that submit orders to the Exchange through both a direct connection and through Sponsored Access to utilize ERSTP by utilizing the Multiple Access identifier.[15] Specifically, the Exchange is proposing to allow individual firms who choose to access the System through both a direct connection and through Sponsored Access to use ERSTP functionality in order to prevent executions from occurring between those separate Users that are associated with the direct connection and Sponsored Access. When a firm requests ERSTP using the Multiple Access identifier and the Exchange confirms that the individual firm is both a Member that accesses the Exchange through a direct connection and maintains a Sponsored Participant relationship on the Exchange, the Exchange will assign an identical Multiple Access identifier to each User. This Multiple Access identifier will be used to prevent executions between contra side orders entered by the Users assigned the same Multiple Access identifier. The purpose of this proposed change is to extend ERSTP functionality to separate Users originating from the same individual firm in order to prevent transactions between the firm's orders submitted directly to the System and through Sponsored Access.

To demonstrate how ERSTP will operate with the proposed Multiple Access identifier, the Exchange has included examples of potential scenarios in which ERSTP may be used by individual Users utilizing the Multiple Access identifier. For all examples below, User A represents Firm 1 accessing the System through a direct connection. User B also represents Firm 1 but where Firm 1 is accessing the System as a Sponsored Participant through a Sponsoring Member.[16] User A and User B will use a Multiple Access identifier of ''A'' when requesting ERSTP at the Multiple Access level, as both Users submit Firm 1's orders to the System. User C is not related to Users A and B and uses a Multiple Access identifier of ''C''.

Multiple Access Level ERSTP

Scenario 1: User A submits a buy order. User B submits a sell order. User C also submits a sell order. User A has enabled ERSTP at the Multiple Access level using a Multiple Access identifier of A. User B has enabled ERSTP at the Multiple Access level using a Multiple Access identifier of A. User C has not enabled ERSTP. User A's buy order is prevented from executing with User B's sell order as each User has enabled ERSTP at the Multiple Access level using a Multiple Access identifier of A. User A's buy order will be permitted to execute with User C's sell order because User C has not enabled ERSTP.

Scenario 2: User A submits a buy order. User B submits a sell order. User C also submits a sell order. User A has enabled ERSTP at the Multiple Access level using a Multiple Access identifier of A. User B has not enabled ERSTP. User C has enabled ERSTP at the Multiple Access level using a Multiple Access identifier of C. User A's order will be eligible to trade with both User B and User C. User A's order is eligible to trade with User B because User B did not enable ERSTP. In order for ERSTP to prevent the matching of contra side orders, both the buy and sell order must contain an ERSTP modifier. User A's order is also eligible to trade with User C because even though User A and User C have both enabled ERSTP at the Multiple Access level, User A and User C have been assigned different Multiple Access identifiers.

Scenario 3: User A submits a buy order and a sell order. User B submits a buy order. User A has enabled ERSTP at the Multiple Access level using a Multiple Access identifier of A. User B

[12] *See* Exchange Rule 11.10(d). *See also* 17 CFR 230.405. An *affiliate* of, or person *affiliated* with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

[13] A ''wash sale'' is generally defined as a trade involving no change in beneficial ownership that is intended to produce the false appearance of trading and is strictly prohibited under both the federal securities laws and FINRA rules. *See, e.g.,* 15 U.S.C.3 78i(a)(1); FINRA Rule 6140(b) (''Other Trading Practices'').

[14] Self-trades are ''transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve no change in beneficial ownership of the security.'' FINRA requires members to have policies and procedures in place that are reasonably designed to review trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks. *See* FINRA Rule 5210, Supplementary Material .02.

[15] The Exchange will require firms requesting to use the Multiple Access identifier to complete an affidavit stating: (i) it is currently a Member of the Exchange that submits orders directly to the System, and (ii) it also submits orders to the System through a Sponsored Access arrangement.

[16] *See* Exchange Rule 1.5(y). A ''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 resulting 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.

has enabled ERSTP at the Multiple Access level using a Multiple Access identifier of A. User A's buy order is not eligible to execute with User A's sell order because User A has enabled ERSTP at the Multiple Access level using a Multiple Access identifier of A. User A's sell order is not eligible to execute with User B's buy order because both User A and User B have enabled ERSTP at the Multiple Access level using a Multiple Access identifier of A.

Scenario 4: User A submits a buy order and a sell order. User B submits a sell order. User C submits a sell order. User A has enabled ERSTP at the Multiple Access level using a Multiple Access identifier of A. User B has enabled ERSTP at the Multiple Access level using a Multiple Access identifier of A. User C has enabled ERSTP at the Multiple Access level using a Multiple Access identifier of C. User A's buy order is not eligible to execute with User A's sell order because User A has enabled ERSTP at the Multiple Access level using a Multiple Access identifier of A. User A's buy order is not eligible to execute with User B's sell order because both User A and User B have enabled ERSTP at the Multiple Access level using a Multiple Access identifier of A. User A's buy order is eligible to execute with User C's sell order because while User A and User C have enabled ERSTP at the Multiple Access level, User A and User C have been assigned different Multiple Access identifiers.

The Exchange plans to implement the proposed rule change during the third quarter of 2023 and will announce the implementation date via Trade Desk Notice.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) [18] 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) [19] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed Multiple Access level ERSTP functionality promotes just and equitable principles of trade by allowing individual firms to better manage order flow and prevent undesirable trading activity such as wash sales'' [20] or self-trades [21] that may occur as a result of the velocity of trading in today's high-speed marketplace. The proposed Multiple Access identifier and description of eligibility to utilize the proposed Multiple Access identifier does not introduce any new or novel functionality, as the proposed amendment does not seek to change the underlying ERSTP functionality, but merely extends the current ERSTP functionality to another trading relationship. For instance, a User may operate trading desk 1 that accesses the Exchange via the User's direction connection, as well as trading desk 2 that access the Exchange as a Sponsored Participant. While these desks may operate different trading strategies, a User may desire to prevent these desks from trading versus each other in the marketplace because the orders are originating from the same entity. Here, Users may desire ERSTP functionality on a Multiple Access level that will help them achieve compliance [22] with regulatory rules regarding wash sales and self-trades in a very similar manner to the way that the current ERSTP functionality applies on the existing Unique Identifier level. In this regard, the proposed Multiple Access level ERSTP functionality will permit individual firms associated with different Users for purposes of submitting orders to the Exchange in a different manner to prevent the execution of transactions by and between the Users. The Exchange also believes that the proposed rule change is fair and equitable and is not designed to permit unfair discrimination as use of the proposed ERSTP functionality is optional, and its use is not a prerequisite for trading on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. ERSTP is an optional functionality offered by the Exchange and Users are free to decide whether to use ERSTP in their decision-making process when submitting orders to the Exchange.

The Exchange believes that the proposed Multiple Access identifier does not impose any intramarket competition as it seeks to enhance an existing functionality available to all Users. The Exchange is not proposing to introduce any new or novel functionality, but rather is proposing to provide an extension of its existing ERSTP functionality to individual firms who choose to access the System through both a direct connection and through Sponsored Access. Additionally, the proposed rule specifies which Users are eligible to use the Multiple Access identifier and will be available to any User who satisfies such criteria. ERSTP will continue to be an optional functionality offered by the Exchange and the addition of Multiple Access level ERSTP will not change how the current Unique Identifiers and ERSTP functionality operate.

The Exchange believes that the proposed Multiple Access identifier does not impose any undue burden on intermarket competition. ERSTP is an optional functionality offered by the Exchange and Users are not required to use ERSTP functionality when submitting orders to the Exchange. Further, the Exchange is not required to offer ERSTP and is choosing to do so as a benefit for Users who wish to enable ERSTP functionality. Moreover, the proposed change is not being submitted for competitive reasons, but rather to provide Users enhanced order processing functionality that may prevent undesirable executions by affiliated Users such as wash sales or self-trades.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *Id.*

[20] *Supra* note 13.

[21] *Supra* note 14.

[22] The Exchange reminds Users that while they may utilize ERSTP to help prevent potential transactions such as wash sales or self-trades, Users, not the Exchange, are ultimately responsible for ensuring that their orders comply with applicable rules, laws, and regulations.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [23] and Rule 19b–4(f)(6) [24] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [25] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[26] the Commission may designate a shorter time if 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 waiver of the 30-day operative delay will allow the Exchange to immediately offer its Users that access the Exchange's System through a direct connection and through Sponsored Access the ability to better manage order flow and prevent undesirable executions, such as wash sales and self-trades, in the same manner as Users who currently enable ERSTP at the MPID, Exchange Member identifier, ERSTP Group identifier, or affiliate identifier levels. 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.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeEDGA–2023–013 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–CboeEDGA–2023–013. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeEDGA–2023–013 and should be submitted on or before August 24, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Sherry R. Haywood,

Assistant Secretary.

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[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 240.19b–4(f)(6)(iii).

[27] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[28] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98016; File No. SR–PEARL–2023–32]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Provide an Additional Means of Access to the Member Firm Portal Through an Application Programming Interface

July 28, 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 July 21, 2023, MIAX PEARL LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to provide an additional means to access its Member Firm Portal (''MFP'').

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/pearl-options/rule-filings,* at MIAX Pearl'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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange provides Members access to an internet-facing portal which provides self-service functions to Members, known as the MFP. Specifically, the MFP allows Members to correct certain trade information required by the Options Clearing Corporation (''OCC''), such as the trade's account number, sub-account number, Clearing Member Trade Assignment (''CMTA''), Clearing Participant Give-Up, or account type. The MFP also provides Members the ability to adjust risk settings and allows Market Makers [3] to request options class assignments. Members may also perform the following function via the MFP: selecting symbol assignments; editing existing symbol assignments; unassigning one or more symbol; retrieving symbol assignments; receiving export of symbol assignments for a business day; and retrieving assignment history for a given symbol assignment. The MFP allows Members to more efficiently manage their back office operations and assist them in providing accurate clearing information to the OCC. Currently, access to the MFP is provided on a per user basis, whereby Members seek to have individuals within their organization permissioned to access the MFP via a web portal on their behalf (known as the ''MFP User Interface'' or ''MFP UI''). The Exchange notes that other options exchanges make similar products available to firms for a monthly per user fee.[4] The Exchange provides the MFP UI to Members free of charge.

Members have requested that the Exchange also provide access to the MFP via an Application Programming Interface [5] (''API'' and together ''MFP API''), in addition to the current MFP UI accessed via the web portal. In sum, an API is a way for two or more computer programs to talk to each other. It is a software to software interface that defines the data and the transactions that can be communicated between systems. In providing the MPF API, functions that would otherwise be done manually via the MFP UI, can be automated. The MFP API, in essence, facilitates and expedites the transaction processing for the supported functionality such that the Exchange Members can automate their interactions with the MFP. This allows for more efficient processing, the potential reduction of operational risk due to issues caused by human error, the timeliness of the completion of MFP-related functions, etc.[6] Providing API access to the MFP would allow Members to enable their systems and applications to communicate directly with the MFP, thereby eliminating or reducing the need for individuals to access the MFP UI via the web portal.

The Exchange does not propose to alter the current MFP or MFP UI. The Exchange simply proposes to provide an additional and optional means to access the MFP, in the form of an API, and Members would be able to perform the same functions they do today when they access the MFP UI via the web portal. API access to the MFP would allow a Member's applications to communicate directly with the MFP. Therefore, by its nature, the MFP API does not lend itself to access on a per user basis, as is the case today with the MFP UI via the web portal. API access would allow Members to automate functions they perform today on the MFP, such as adjusting risk settings or managing options assignments. Members who do not prefer to access the MFP API would be able to perform the same functions when accessing the MFP UI via the current web portal.

The Exchange notes that use of accessing the MFP API would be completely voluntary and would simply be second optional means to access the MFP. Members who wish to continue to access the MFP UI via the web portal may continue to do so for no fee.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[7] in general, and Section 6(b)(5),[8] 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange notes that providing the MFP API to Members is consistent with the Act in that the use of MFP API is completely voluntary and simply provides Members with an additional means to access the Exchange's MFP. The MFP is a useful tool for Members to manage their trading on the Exchange, including back office operations, risk controls settings, and Market Maker options assignments.

As noted above, accessing the MFP via an API would be an optional alternative to web access. Those not electing to access the MFP via an API may continue to use the MFP UI via the web portal free of charge. The MFP, whether accessed via an API or web portal, allow Members to more efficiently manage their back office operations, assist them in providing accurate clearing information to the OCC and in selecting Market Maker options assignments. The Exchange notes that trade information in the MFP is specific to each Member and their trades, allowing them to conveniently verify, update, and/or correct transaction information as needed.

Providing API access to the MFP would be provided purely for convenience, in response to Member demand, and would be entirely optional. As stated above, API access to the MFP would enable Members to connect their applications to the MFP allowing their application to communicate directly with the MFP. This enables Members to automate functions that would normally be performed by individual users access the MFP via the current web portal, such as adjusting risk settings and managing options assignements. Members who do not prefer to access the MFP API would be able to perform the same functions by accessing the MFP UI via the existing web portal.

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. API access to the MFP would simply be an optional additional means to access the MFP. The Exchange does not believe there would be any competitive advantage for

[3] *See* Exchange Rule 100.

[4] *See* BOX Exchange LLC Fee Schedule, Section III. D. The Nasdaq Stock Market LLC (''Nasdaq'') charges $200 per month, per user. *See* Nasdaq Rules Options 7 Pricing Schedule, Section 6 Nasdaq Options Maintenance Tool. *See also* Securities Exchange Act Release No. 96723 (January 20, 2023), 88 FR 5046 (January 26, 2023) (SR–BOX–2023–03) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish a New Service and Related Fees for Use of the BOX Options Market LLC (''BOX'') Trade Management System).

[5] The Exchange intends to submit a separate filing with the Commission pursuant to Section 19(b)(1) to propose fees for the Service.

[6] *See, e.g., What is an API?, available at https://www.ibm.com/topics/api* (last visited June 22, 2023).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

Members who access the MFP via an API over those who access it via the current web portal because Members would be able to perform the same functions via both modes of access. API access would simply be a convenience and would enable Members to automate those functions. The Exchange does not believe a Member's ability to automate this functionality provides any competitive advantage when trading on the Exchange. As such, the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition not necessary or appropriate in furtherance of the purposes of the Act.

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 after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange requested the waiver because it would allow the Exchange to expand the means of access to the MFP sooner and meet the demands of Members who have requested API access to meet their own back office needs. The Exchange stated that Members requested the ability to access the API so that they may automate certain functions and that they would be able to perform the same functions in the MFP regardless of whether they access the MFP via the web portal or an API. For these reasons, and because the proposed rule change does not raise any novel legal or 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 30-day operative delay and designates the proposal operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–PEARL–2023–32 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–PEARL–2023–32. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–PEARL–2023–32 and should be submitted on or before August 24, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98017; File No. SR–MIAX–2023–29]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Provide an Additional Means of Access to the Member Firm Portal Through an Application Programming Interface

July 28, 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 July 21, 2023, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 provide an additional means to access its Member Firm Portal (''MFP'').[3]

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/miax-options/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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange provides Members access to an internet-facing portal which provides self-service functions to Members, known as the MFP. Specifically, the MFP allows Members to correct certain trade information required by the Options Clearing Corporation (''OCC''), such as the trade's account number, sub-account number, Clearing Member Trade Assignment (''CMTA''), Clearing Participant Give-Up, or account type. The MFP also provides Members the ability to adjust risk settings and allows Market Makers[4] to request options class assignments. Members may also perform the following function via the MFP: selecting symbol assignments; editing existing symbol assignments; unassigning one or more symbol; retrieving symbol assignments; receiving export of symbol assignments for a business day; and retrieving assignment history for a given symbol assignment. The MFP allows Members to more efficiently manage their back office operations and assist them in providing accurate clearing information to the OCC. Currently, access to the MFP is provided on a per user basis, whereby Members seek to have individuals within their organization permissioned to access the MFP via a web portal on their behalf (known as the ''MFP User Interface'' or ''MFP UI''). The Exchange notes that other options exchanges make similar products available to firms for a monthly per user fee.[5] The Exchange provides the MFP UI to Members free of charge.

Members have requested that the Exchange also provide access to the MFP via an Application Programming Interface[6] (''API'' and together ''MFP API''), in addition to the current MFP UI accessed via the web portal. In sum, an API is a way for two or more computer programs to talk to each other. It is a software to software interface that defines the data and the transactions that can be communicated between systems. In providing the MPF API, functions that would otherwise be done manually via the MFP UI, can be automated. The MFP API, in essence, facilitates and expedites the transaction processing for the supported functionality such that the Exchange Members can automate their interactions with the MFP. This allows for more efficient processing, the potential reduction of operational risk due to issues caused by human error, the timeliness of the completion of MFP-related functions, etc.[7] Providing API access to the MFP would allow Members to enable their systems and applications to communicate directly with the MFP, thereby eliminating or reducing the need for individuals to access the MFP UI via the web portal.

The Exchange does not propose to alter the current MFP or MFP UI. The Exchange simply proposes to provide an additional and optional means to access the MFP, in the form of an API, and Members would be able to perform the same functions they do today when they access the MFP UI via the web portal. API access to the MFP would allow a Member's applications to communicate directly with the MFP. Therefore, by its nature, the MFP API does not lend itself to access on a per user basis, as is the case today with the MFP UI via the web portal. API access would allow Members to automate functions they perform today on the MFP, such as adjusting risk settings or managing options assignments. Members who do not prefer to access the MFP API would be able to perform the same functions when accessing the MFP UI via the current web portal.

The Exchange notes that use of accessing the MFP API would be completely voluntary and would simply be second optional means to access the MFP. Members who wish to continue to access the MFP UI via the web portal may continue to do so for no fee.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[8] in general, and Section 6(b)(5),[9] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange notes that providing the MFP API to Members is consistent with the Act in that the use of MFP API is completely voluntary and simply provides Members with an additional means to access the Exchange's MFP. The MFP is a useful tool for Members to manage their trading on the Exchange, including back office operations, risk controls settings, and Market Maker options assignments.

As noted above, accessing the MFP via an API would be an optional alternative to web access. Those not electing to access the MFP via an API may continue to use the MFP UI via the web portal free of charge. The MFP, whether accessed via an API or web portal, allow Members to more efficiently manage their back office operations, assist them in providing accurate clearing information to the OCC and in selecting Market Maker

[3] *See* MIAX Exchanges Member Firm Portal User Manual, *available at https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Exchanges_Member_Firm_Portal_User_Manual_01032023.pdf.*

[4] The term ''Market Makers'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[5] *See* BOX Exchange LLC Fee Schedule, Section III. D. The Nasdaq Stock Market LLC (''Nasdaq'') charges $200 per month, per user. *See* Nasdaq Rules Options 7 Pricing Schedule, Section 6 Nasdaq Options Maintenance Tool. *See also* Securities Exchange Act Release No. 96723 (January 20, 2023), 88 FR 5046 (January 26, 2023) (SR–BOX–2023–03) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish a New Service and Related Fees for Use of the BOX Options Market LLC (''BOX'') Trade Management System).

[6] The Exchange intends to submit a separate filing with the Commission pursuant to Section 19(b)(1) to propose fees for the Service.

[7] *See, e.g., What is an API?, available at https://www.ibm.com/topics/api* (last visited June 22, 2023).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

options assignments. The Exchange notes that trade information in the MFP is specific to each Member and their trades, allowing them to conveniently verify, update, and/or correct transaction information as needed.

Providing API access to the MFP would be provided purely for convenience, in response to Member demand, and would be entirely optional. As stated above, API access to the MFP would enable Members to connect their applications to the MFP allowing their application to communicate directly with the MFP. This enables Members to automate functions that would normally be performed by individual users access the MFP via the current web portal, such as adjusting risk settings and managing options assignements. Members who do not prefer the to access the MFP API would be able to perform the same functions by accessing the MFP UI via the existing web portal.

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. API access to the MFP would simply be an optional additional means to access the MFP. The Exchange does not believe there would be any competitive advantage for Members who access the MFP via an API over those access it via the current web portal because Members would be able to perform the same functions via both modes of access. API access would simply be a convenience and would enable Members to automate those functions. The Exchange does not believe a Member's ability to automate this functionality provides any competitive advantage when trading on the Exchange. As such, the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition not necessary or appropriate in furtherance of the purposes of the Act.

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 after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder.

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 the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange requested the waiver because it would allow the Exchange to expand the means of access to the MFP sooner and meet the demands of Members who have requested API access to meet their own back office needs. The Exchange stated that Members requested the ability to access the API so that they may automate certain functions and that they would be able to perform the same functions in the MFP regardless of whether they access the MFP via the web portal or an API. For these reasons, and because the proposed rule change does not raise any novel legal or 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 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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MIAX–2023–29 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–2023–29. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MIAX–2023–29 and should be submitted on or before August 24, 2023.

[10] 15 U.S.C. 78s(b)(3)(A).

[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, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[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 also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16502 Filed 8–2–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98023]

Order Granting a Temporary Conditional Exemption Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 and Rule 608(e) of Regulation NMS Under the Exchange Act, Relating to the Reporting of Certain Activities on the Floor of National Securities Exchanges and Certain Activities by Industry Members Off Exchange Floors, as Required by Section 6.4(d) of the National Market System Plan Governing the Consolidated Audit Trail

I. Introduction

By letter dated March 31, 2023, 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, LLC, Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc., (collectively, the ''Participants'' or ''SROs'') requested that the Securities and Exchange Commission (''Commission'') grant temporary conditional exemptive relief to the Participants from the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan''),[1] pursuant to its authority under section 36(a)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [2] and Rule 608(e) of Regulation NMS under the Exchange Act, from certain reporting requirements in section 6.4(d) of the CAT NMS Plan relating to certain activities on the floors of national securities exchanges and certain activities by Industry Members off exchange floors (''upstairs activity'').[3]

Section 36(a)(1) of the Exchange Act grants the Commission the authority, with certain limitations, to ''conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.'' [4] Under Rule 608(e) of Regulation NMS, the Commission may ''exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system.'' [5]

For the reasons set forth below, the Commission believes that it is consistent with the purposes of the Exchange Act to grant temporary conditional exemptive relief relating to the reporting of: (1) Floor broker verbal announcements of firm orders on an exchange that are otherwise reported as systematized orders; (2) market maker verbal announcements of firm quotes on an exchange trading floor; (3) telephone discussions between an Industry Member and a client that may involve firm bid and offer communications; and (4) unstructured electronic and verbal communications that are not currently captured by Industry Member order management or execution systems (*e.g.,* Bloomberg chats, text messages), subject to certain conditions, and expiring on July 31, 2026.

II. Background and Request for Relief

On November 12, 2020, pursuant to section 36(a)(1) of the Exchange Act,[6] and Rule 608(e) of the Exchange Act,[7] the Commission granted the Participants an exemption, until July 31, 2023, from the requirement in section 6.4(d) of the CAT NMS Plan that requires each Participant, through its Compliance Rule, to require its Industry Members to record and electronically report to the Central Repository: (1) Floor broker verbal announcements of firm orders on an exchange that are otherwise reported as systematized orders; (2) market maker verbal announcements of firm quotes on an exchange trading floor; (3) telephone discussions between an Industry Member and a client that may involve firm bid and offer communications; and (4) unstructured electronic and verbal communications that are not currently captured by Industry Member order management or execution systems (*e.g.,* Bloomberg chats, text messages), subject to certain conditions.[8]

In the March 31, 2023 Exemption Request, the Participants request that the Commission extend the temporary exemptive relief granted in the 2020 Order for an additional three years, to July 31, 2026. In support of their request, the Participants reiterate their belief that the verbal floor activity and unstructured verbal and electronic upstairs activity at issue were not previously contemplated by Rule 613 or the CAT NMS Plan.[9] The Participants state that the Commission disagreed with the Participants' view in the 2020 Order, but did not cite to any discussion in the CAT NMS Plan or the CAT NMS Plan Adopting Release regarding the activity at issue, nor did the Commission address the Participants' assertion that there was no cost-benefit analysis related to the capture and reporting of this activity in the CAT NMS Plan Adopting Release.[10]

The Participants also state that potential technological or business breakthroughs contemplated by the 2020 Order have not materialized, with neither natural language processing nor voice recognition technology currently sophisticated enough to reliably, accurately and consistently capture, parse and analyze and report interactions in the current trading environments and workflows.[11] Accordingly, the Participants state that they, CAT Advisory Committee members, and Industry Member groups, including the Financial Information Forum (FIF), have considered this issue and continue to believe that capturing and interpreting this activity in an

[15] 17 CFR 200.30–3(a)(12).

[1] The CAT NMS Plan was approved by the Commission, as modified, on November 15, 2016. *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (''CAT NMS Plan Approval Order'').

[2] 15 U.S.C. 78mm(a)(1).

[3] *See* letter from the Participants to Vanessa Countryman, Secretary, Commission, dated March 31, 2023 (the ''March 31, 2023 Exemption Request''). Unless otherwise noted, capitalized terms are used as defined in the CAT NMS Plan. ''Upstairs'' is a term used to describe the off-exchange market. For example, trading that occurs within a broker-dealer firm or between two broker-dealers in the over-the-counter market would be described as occurring ''upstairs.''

[4] 15 U.S.C. 78mm(a)(1).

[5] 17 CFR 242.608(e).

[6] 15 U.S.C. 78mm(a)(1).

[7] 17 CFR 242.608(e).

[8] Securities Exchange Act Release No. 90405, 85 FR 73544 (November 18, 2020) (the ''2020 Order'').

[9] March 31, 2023 Exemptive Request, at 4.

[10] *See id.* at 4.

[11] *See id.* at 5.

automated manner without human intervention is not possible with current technology, nor would it be cost-effective to manually capture this activity.[12]

The Participants also state that manually capturing and reporting verbal activity would be costly, inconsistent, prone to error, and disruptive.[13] The Participants state that manually capturing these events is impracticable and not cost-effective because it would require listening to every verbal interaction either live or from tape and/or sifting through electronic communications, and that the determination of whether unstructured electronic and verbal activity involves a firm bid or offer is a manual, subjective process that could be highly prone to error resulting in overreporting and/or underreporting to the CAT.[14] This would lead to inconsistent or less accurate data across CAT Reporters, because Industry Members will capture the same activity differently, resulting in misleading or incomplete views of transactions and limit regulators' ability to determine compliance with any reporting requirement.[15]

In addition, the Participants do not believe that the reporting of the verbal and manual quotes and orders at issue in the 2020 Order would provide meaningful value from a regulatory or surveillance perspective.[16] The Participants state that orders on exchange floors are systematized and reportable to CAT, and manual orders in ''upstairs activity'' whether or not trades occur on an exchange floor or off-floor are also reportable to CAT.[17] The Participants also represent that the CAT Advisory Committee believes that bilateral negotiations in upstairs activity, such as between asset brokers and broker-dealers, or between two broker-dealers, are currently captured when the broker either creates an order, as in from an asset manager, or accepts an order, as in from another broker-dealer, and when the trade execution occurs.[18] The Participants also state that verbal floor and unstructured verbal and electronic upstairs activities do not lend themselves to the types of market manipulation considered in the adoption of Rule 613, and that the costs of compliance would outweigh any incremental value for regulatory or surveillance purposes.[19]

III. Discussion of Participants' Exemption Request

The Commission has carefully considered the Participants' exemption request. The Commission believes that extending temporary exemptive relief is, pursuant to section 36(a)(1) of the Exchange Act, appropriate in the public interest and consistent with the protection of investors, and that pursuant to Rule 608(e), this exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and the perfection of a national market system.

The Participants dispute the Commission's position that verbal and manual quotes and orders are required to be reported to the CAT.[20] Because the Commission believes that the Participants' request for an extension of the temporary exemption from these reporting requirements is reasonable, we do not address their arguments here.

The Commission believes that extending the temporary exemptive relief should allow Participants and Industry Members time to collaborate, develop, and implement a reporting framework, guidelines, FAQs, and scenarios necessary for effective and efficient reporting of floor-based verbal quotes and order and upstairs activity.

Based on the foregoing, pursuant to section 36(a)(1) of the Exchange Act, it is appropriate in the public interest and consistent with the protection of investors, and pursuant to Rule 608(e), it is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and the perfection of a national market system to extend conditional temporary relief for the reporting of: (1) Floor broker verbal announcements of firm orders on an exchange that are otherwise reported as systematized orders; (2) market maker verbal announcements of firm quotes on an exchange trading floor; (3) telephone discussions between an Industry Member and a client that may involve firm bid and offer communications; and (4) unstructured electronic and verbal communications that are not currently captured by Industry Member order management or execution systems (*e.g.,* Bloomberg chats, text messages). Extending the temporary exemptive relief until July 31, 2026, would provide Participants the time to develop and implement any necessary reporting guidance, specifications, and any technical changes to the CAT and is approximately four years after the date by which the Participants previously estimated that the CAT would be fully implemented, July 11, 2022.[21] It would also provide CAT Reporters the time to fully consider and implement how to report such events and create the necessary technological and process changes required to capture these required quotes and orders while minimizing potential business disruptions and impacts to existing workflows. However, the Commission believes it is appropriate to provide exemptive relief subject to certain conditions discussed below.

IV. Conclusion

The Commission believes it is appropriate to extend the temporary exemptive relief that exempts each Participant from the requirement in section 6.4(d) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require its Industry Members to record and electronically report to the Central Repository the following communications, until July 31, 2026: (1) Floor broker verbal announcements of firm orders on an exchange that are otherwise reported as systematized orders; (2) market maker verbal announcements of firm quotes on an exchange trading floor; (3) telephone discussions between an Industry Member and a client that may involve firm bid and offer communications; and (4) unstructured electronic and verbal communications that are not currently captured by Industry Member order management or execution systems (*e.g.,* Bloomberg chats, text messages).

As a condition to this relief, the Participants must provide the Commission a written status update on the reporting of these quotes and orders by July 31, 2025, including, for both verbal activity on exchange floors and upstairs activity separately, an analysis of the feasibility of traders contemporaneously recording firm bid and offer information for verbal and manual quotes and orders, and an implementation plan for the reporting of these quotes and orders. Furthermore, this implementation plan for the reporting of these quotes and orders must: (1) identify verbal and manual workflows to facilitate the reporting of these quotes and orders; (2) provide or reference published guidelines for

[12] *See id.*

[13] *See id.* at 5–6.

[14] *See id.*

[15] *See id.* at 6.

[16] *See id.* at 5–6.

[17] *See id.* at 6–7.

[18] *See id.* at 7.

[19] *See id.*

[20] *See* 2020 Order, *supra* note 8, at 73547; CAT NMS Plan at Section 1.1.

[21] *See* Securities Exchange Act Release No. 88890 (May 15, 2020), 85 FR 31322, 31334 (May 22, 2020).

Industry Members for determining when verbal or manual communications become firm and are required to be reported; and (3) provide or reference published technical specifications to allow for the reporting of verbal and manual quotes and orders by Industry Members. The purpose of these conditions is to help ensure that the Participants establish a framework necessary to permit the reporting of verbal and manual quotes and orders by Industry Members before the expiration of the temporary conditional exemptive relief.

Accordingly, *it is hereby ordered*, pursuant to section 36(a)(1) of the Exchange Act,[22] and Rule 608(e) of the Exchange Act [23] that the Participants are granted an exemption, until July 31, 2026, from the requirement in section 6.4(d) of the CAT NMS Plan that requires each Participant, through its Compliance Rule, to require its Industry Members to record and electronically report to the Central Repository: (1) Floor broker verbal announcements of firm orders on an exchange that are otherwise reported as systematized orders; (2) market maker verbal announcements of firm quotes on an exchange trading floor; (3) telephone discussions between an Industry Member and a client that may involve firm bid and offer communications; and (4) unstructured electronic and verbal communications that are not currently captured by Industry Member order management or execution systems (*e.g.,* Bloomberg chats, text messages), subject to the conditions described above.

By the Commission.

Dated: July 28, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16518 Filed 8–2–23; 8:45 am]

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[22] 15 U.S.C. 78mm(a)(1).

[23] 17 CFR 242.608(e).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98015; File No. SR–CboeBZX–2023–055]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to Securities Listed on the Exchange, Which Are Set Forth in BZX Rule 14.13, Company Listing Fees

July 28, 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 July 27, 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 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

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to amend the fees applicable to securities listed on the Exchange, which are set forth in BZX Rule 14.13, Company Listing Fees. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing and delisting of companies on the Exchange,[3] which it modified on February 8, 2012 in order to adopt pricing for the listing of exchange-traded products (''ETPs'') [4] on the Exchange.[5] On January 1, 2019, the Exchange amended Rule 14.13 in order to charge an entry fee for ETPs that are not ''Generically-Listed ETPs''.[6] [7] Now, the Exchange proposes to amend its listing fees to provide that the entry fee provided in Rule 14.13(b)(1)(C)(i) will be charged for non-Generically Listed ETPs for each proposed rule change pursuant to Section 19(b) of the Exchange Act (''Exchange Rule Filing'').

Currently, Exchange Rule 14.13(b)(1)(C) provides that a Company that submits an application to list any ETP shall be required to pay an entry fee to the Exchange as follows:

(i) All ETPs, with the exception of Generically-Listed ETPs, shall pay an entry fee of $7,500. Each issuer will be subject to an aggregate maximum entry fee of $22,500 per calendar year.

(ii) There is no entry fee for Generically-Listed ETPs or ETPs that transfer their listing from another national securities exchange to the Exchange (a ''Transfer Listing'').

As such, a $7,500 fee applies to each ETP per application rather than per Exchange Rule Filing. The Exchange now proposes to amend and restructure Exchange Rule 14.13(b)(1)(C)(i) to provide that all ETPs that are not Generically-Listed will be charged the fee for each Exchange Rule Filing unless it is in furtherance of the same continuous effort. Rule 14.13(b)(1)(C)(i) would be modified to define the term ''Exchange Rule Filing'' and clarify that the entry fee is applied on a per ETP basis. Accordingly, proposed Rule 14.13(b)(1)(C)(i) would state that all ETPs, with the exception of Index Fund Shares, Portfolio Depositary Receipts, Managed Fund Shares, Linked Securities, Currency Trust Shares, and Exchange-Traded Fund Shares that are listed on the Exchange pursuant to Rule 19b–4(e) under the Exchange Act and for which an Exchange Rule Filing is not required to be filed with the Commission (collectively, ''Generically-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[4] As defined in Rule 11.8(e)(1)(A), the term ''ETP'' means any security listed pursuant to Exchange Rule 14.11.

[5] *See* Securities Exchange Act Release No. 66422 (February 17, 2012), 77 FR 11179 (February 24, 2012) (SR–BATS–2012–010).

[6] ''Generically-Listed ETPs'' refers to all ETPs, with the exception of Index Fund Shares, Portfolio Depositary Receipts, Managed Fund Shares, Linked Securities, Currency Trust Shares, and Exchange-Traded Fund Shares that are listed on the Exchange pursuant to Rule 19b–4(e) under the Exchange Act and for which a proposed rule change pursuant to Section 19(b) of the Exchange Act is not required to be filed with the Commission. *See* Exchange Rule 14.13(b)(1)(C)(i).

[7] *See* Securities Exchange Act No. 83597 (July 5, 2018) 83 FR 32164 (July 11, 2018) (SR–CboeBZX–2018–046) (the ''Original Entry Fee Filing'').

Listed ETPs''), shall pay an entry fee of $7,500 per ETP.

The Exchange notes that the amended entry fee would continue to be subject to the maximum entry fee of $22,500 per calendar year per issuer as currently provided in Rule 14.13(b)(1)(C)(i), however the Exchange proposes to move such provision to proposed Rule 14.13(b)(1)(C)(i)(b). The Exchange also proposes to adopt new Rule 14.13(b)(1)(C)(i)(a), which would state that the Exchange will charge for each Exchange Rule Filing per ETP unless it is in furtherance of the same continuous effort. An Exchange Rule Filing is considered in furtherance of the same continuous effort if: the Exchange Rule Filing is required for ministerial purposes related to another previously filed Exchange Rule Filing, or if the Exchange Rule Filing is withdrawn and refiled within 30 calendar days.

As discussed in the Original Entry Fee Filing, ETPs that require an Exchange Rule Filing require significant additional time and extensive legal and business resources by Exchange staff to prepare and review such filings and to communicate with issuers and the Commission regarding such filings. The proposed fee would be used to address such costs for each Exchange Rule Filing. Therefore, the Exchange is only proposing to assess the entry fee for additional Exchange Rule Filings that are not filed in furtherance of the same continuous effort. For example, the Exchange would not assess an additional entry fee to an ETP in the event that an Exchange Rule Filing was submitted to the Commission and shortly thereafter withdrawn and resubmitted. Similarly, the Exchange would not assess an additional entry fee to an ETP in the event that an Exchange Rule Filing was submitted to the Commission, rejected by the Commission, and shortly thereafter resubmitted. Instances where Exchange Rule Filings are either rejected or withdrawn and refiled shortly thereafter often involve minor or ministerial errors that are in furtherance of the same continuous effort.

Further, the Exchange would not charge an entry fee to an ETP with an Exchange Rule Filing that is withdrawn and shortly thereafter refiled in order to restart the regulatory review period. Specifically, if an Exchange Rule Filing is nearing the end of its regulatory review period but has not met the regulatory burden to be approved by the Commission, the Exchange may withdraw and resubmit the Exchange Rule Filing, which would restart the regulatory review period, rather than receive a disapproval. As the Exchange would withdraw and refile the Exchange Rule Filing within 30 calendar days, the Exchange would consider the subsequent filing to be submitted in furtherance of the same continuous effort.

The Exchange would assess an entry fee to an ETP with an Exchange Rule Filing in all other circumstances. For example, the refiling of an Exchange Rule Filing that has previously been disapproved by the Commission requires updated analysis to address the Commission's basis for disapproval. The Exchange would not consider this new analysis in furtherance of the same continuous effort, and therefore would apply the entry fee to such Exchange Rule Filing. Another example would be the refiling of an Exchange Rule Filing that has been withdrawn, but not refiled within 30 calendar days. The Exchange would not consider such refiling in furtherance of the same continuous effort due to the time lapse and necessary updates required before refiling the Exchange Rule Filing.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5),[9] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its issuers, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that proposed Rule 14.13(b)(1)(C)(i), which provides that that all ETPs that are not Generically-Listed will be charged the entry fee for each Exchange Rule Filing, is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges because it would apply equally to all firms. The Exchange believes that charging such an entry fee for each Exchange Rule Filing unless it is in furtherance of the same continuous effort is reasonable given the additional resources required by the Exchange in preparing each Exchange Rule Filing for an ETP. Specifically, each Exchange Rule Filing requires significant additional time and extensive legal and business resources by Exchange staff to prepare and review such filings and to communicate with issuers and the Commission regarding such filings.

The Exchange believes that an Exchange Rule Filing that is withdrawn and refiled within 30 calendar days can be assumed to be in furtherance of the same continuous effort. Specifically, if an Exchange Rule Filing is nearing the end of its regulatory review period but has not met the regulatory burden to be approved by the Commission, the Exchange may withdraw and resubmit the Exchange Rule Filing, which would restart the regulatory review period, rather than receive a disapproval. As the Exchange would withdraw and refile the Exchange Rule Filing within 30 calendar days, the Exchange would consider the subsequent filing to be submitted in furtherance of the same continuous effort because such a submission would generally not require the same significant additional time and extensive legal and business resources associated with other Exchange Rule Filings.

Furthermore, the marketplace for listings is extremely competitive and there are several other national securities exchanges that offer ETP listings. Transfers between listing venues occur frequently for numerous reasons, including listing fees. The proposed rule change reflects a competitive pricing structure, which the Exchange believes will enhance competition both among ETP issuers and listing venues, to the benefit of investors.

Based on the foregoing, the Exchange believes that the proposed rule changes are consistent with the Act.

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. The Exchange does not believe that the proposed fee will burden competition, but instead, enhance competition, as it is intended to address the costs associated with preparing each Exchange Rule Filing. As such, the proposal is a competitive proposal designed to enhance pricing competition among listing venues and implement pricing that better reflects expenses associated with listing ETPs on the Exchange. The Exchange does not believe the proposed amendment would burden intramarket competition as the proposed fee would be assessed to all issuers uniformly for each Exchange Rule Filing.

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.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4) and (5).

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,[10] and Rule 19b–4(f)(2)[11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–055 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–2023–055. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2023–055 and should be submitted on or before August 24, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16500 Filed 8–2–23; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34976]

Deregistration Under Section 8(f) of the Investment Company Act of 1940

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'')

ACTION: Notice of Applications for Deregistration under Section 8(f) of the Investment Company Act of 1940.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of July 2023. A copy of each application may be obtained via the Commission's website by searching for the applicable file number listed below, 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. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the relevant applicant 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 SEC by 5:30 p.m. on August 22, 2023, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.*

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Assistant Director, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

AlphaCentric Prime Meridian Income Fund [File No. 811–23230]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant currently has fewer than 100 beneficial owners, is not presently making an offering of securities and does not propose to make any offering of securities. Applicant will continue to operate as a private investment fund in reliance on section 3(c)(1) of the Act.

Filing Dates: The application was filed on June 22, 2023.

Applicant's Address: 36 North New York Avenue, Huntington, New York 11743.

BNY Mellon Ultra Short Income Fund [File No. 811–04888]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 21, 2021, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $4,883 incurred in connection with the liquidation were paid by the applicant's investment adviser.

Filing Dates: The application was filed on June 12, 2023.

Applicant's Address: c/o BNY Mellon Investment Adviser, Inc., 240 Greenwich Street, New York, New York 10286.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Dated: July 28, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16491 Filed 8–2–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98018; File No. SR–EMERALD–2023–18]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Provide an Additional Means of Access to the Member Firm Portal Through an Application Programming Interface

July 28, 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 July 21, 2023, MIAX Emerald LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to provide an additional means to access its Member Firm Portal (''MFP'').[3]

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/emerald-options/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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange provides Members access to an internet-facing portal which provides self-service functions to Members, known as the MFP. Specifically, the MFP allows Members to correct certain trade information required by the Options Clearing Corporation (''OCC''), such as the trade's account number, sub-account number, Clearing Member Trade Assignment (''CMTA''), Clearing Participant Give-Up, or account type. The MFP also provides Members the ability to adjust risk settings and allows Market Makers[4] to request options class assignments. Members may also perform the following function via the MFP: selecting symbol assignments; editing existing symbol assignments; unassigning one or more symbol; retrieving symbol assignments; receiving export of symbol assignments for a business day; and retrieving assignment history for a given symbol assignment. The MFP allows Members to more efficiently manage their back office operations and assist them in providing accurate clearing information to the OCC. Currently, access to the MFP is provided on a per user basis, whereby Members seek to have individuals within their organization permissioned to access the MFP via a web portal on their behalf (known as the ''MFP User Interface'' or ''MFP UI''). The Exchange notes that other options exchanges make similar products available to firms for a monthly per user fee.[5] The Exchange provides the MFP UI to Members free of charge.

Members have requested that the Exchange also provide access to the MFP via an Application Programming Interface[6] (''API'' and together ''MFP API''), in addition to the current MFP UI accessed via the web portal. In sum, an API is a way for two or more computer programs to talk to each other. It is a software to software interface that defines the data and the transactions that can be communicated between systems. In providing the MPF API, functions that would otherwise be done manually via the MFP UI, can be automated. The MFP API, in essence, facilitates and expedites the transaction processing for the supported functionality such that the Exchange Members can automate their interactions with the MFP. This allows for more efficient processing, the potential reduction of operational risk due to issues caused by human error, the timeliness of the completion of MFP-related functions, etc.[7] Providing API access to the MFP would allow Members to enable their systems and applications to communicate directly with the MFP, thereby eliminating or reducing the need for individuals to access the MFP UI via the web portal.

The Exchange does not propose to alter the current MFP or MFP UI. The Exchange simply proposes to provide an additional and optional means to access the MFP, in the form of an API, and Members would be able to perform the same functions they do today when they access the MFP UI via the web portal. API access to the MFP would allow a Member's applications to communicate directly with the MFP. Therefore, by its nature, the MFP API does not lend itself to access on a per user basis, as is the case today with the MFP UI via the web portal. API access would allow Members to automate functions they perform today on the MFP, such as adjusting risk settings or managing options assignments. Members who do not prefer to access the MFP API would be able to perform the same functions when accessing the MFP UI via the current web portal.

The Exchange notes that use of accessing the MFP API would be completely voluntary and would simply be second optional means to access the MFP. Members who wish to continue to access the MFP UI via the web portal may continue to do so for no fee.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[8] in general, and Section 6(b)(5),[9] in particular, because it is designed to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* MIAX Exchanges Member Firm Portal User Manual, *available at https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Exchanges_Member_Firm_Portal_User_Manual_01032023.pdf.*

[4] The term ''Market Makers'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[5] *See* BOX Exchange LLC Fee Schedule, Section III. D. The Nasdaq Stock Market LLC (''Nasdaq'') charges $200 per month, per user. *See* Nasdaq Rules Options 7 Pricing Schedule, Section 6 Nasdaq Options Maintenance Tool. *See also* Securities Exchange Act Release No. 96723 (January 20, 2023), 88 FR 5046 (January 26, 2023) (SR–BOX–2023–03) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish a New Service and Related Fees for Use of the BOX Options Market LLC (''BOX'') Trade Management System).

[6] The Exchange intends to submit a separate filing with the Commission pursuant to Section 19(b)(1) to propose fees for the Service.

[7] *See, e.g., What is an API?, available at https://www.ibm.com/topics/api* (last visited June 22, 2023).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange notes that providing the MFP API to Members is consistent with the Act in that the use of MFP API is completely voluntary and simply provides Members with an additional means to access the Exchange's MFP. The MFP is a useful tool for Members to manage their trading on the Exchange, including back office operations, risk controls settings, and Market Maker options assignments.

As noted above, accessing the MFP via an API would be an optional alternative to web access. Those not electing to access the MFP via an API may continue to use the MFP UI via the web portal free of charge. The MFP, whether accessed via an API or web portal, allow Members to more efficiently manage their back office operations, assist them in providing accurate clearing information to the OCC and in selecting Market Maker options assignments. The Exchange notes that trade information in the MFP is specific to each Member and their trades, allowing them to conveniently verify, update, and/or correct transaction information as needed.

Providing API access to the MFP would be provided purely for convenience, in response to Member demand, and would be entirely optional. As stated above, API access to the MFP would enable Members to connect their applications to the MFP allowing their application to communicate directly with the MFP. This enables Members to automate functions that would normally be performed by individual users access the MFP via the current web portal, such as adjusting risk settings and managing options assignements. Members who do not prefer to access the MFP API would be able to perform the same functions by accessing the MFP UI via the existing web portal.

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. API access to the MFP would simply be an optional additional means to access the MFP. The Exchange does not believe there would be any competitive advantage for Members who access the MFP via an API over those who access it via the current web portal because Members would be able to perform the same functions via both modes of access. API access would simply be a convenience and would enable Members to automate those functions. The Exchange does not believe a Member's ability to automate this functionality provides any competitive advantage when trading on the Exchange. As such, the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition not necessary or appropriate in furtherance of the purposes of the Act.

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 after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder.

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 the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange requested the waiver because it would allow the Exchange to expand the means of access to the MFP sooner and meet the demands of Members who have requested API access to meet their own back office needs. The Exchange stated that Members requested the ability to access the API so that they may automate certain functions and that they would be able to perform the same functions in the MFP regardless of whether they access the MFP via the web portal or an API. For these reasons, and because the proposed rule change does not raise any novel legal or 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 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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–EMERALD–2023–18 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–EMERALD–2023–18. 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

[10] 15 U.S.C. 78s(b)(3)(A).

[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, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[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 also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–EMERALD–2023–18 and should be submitted on or before August 24, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16503 Filed 8–2–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98014; File No. SR–NASDAQ–2023–025]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Establish Listing Standards Related To Notification and Disclosure of Reverse Stock Splits

July 28, 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 July 21, 2023, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish listing standards related to notification and disclosure of reverse stock splits.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq has observed that the current market environment has led to an increase in reverse stock split activity. In 2022, Nasdaq processed 196 reverse stock splits, compared to 31 in 2021 and 94 in 2020. As of June 23, 2023, Nasdaq has processed 164 reverse stock splits, and projects significantly more throughout 2023. Reverse stock splits are often effected by smaller companies that do not have broad media or research coverage. In most cases, the companies are listed on the Capital Market tier and are conducting reverse stock splits to achieve compliance with Nasdaq's $1 bid price requirement.[3]

Nasdaq believes that the increase in companies effecting reverse stock splits warrants amendments to the listing rules to enhance the ability for market participants to accurately process these events, and thereby maintain fair and orderly markets. As such, Nasdaq is proposing amendments to its rules regarding notification and disclosure of reverse stock splits and regulatory halts.[4] Specifically, Nasdaq is proposing to adopt additional listing rules requiring a company conducting a reverse stock split to notify Nasdaq about certain details of the reverse stock split at least five (5) business days (no later than 12:00 p.m. ET) prior to the anticipated market effective date, and make public disclosure about the reverse stock split at least two (2) business days (no later than 12:00 p.m. ET) prior to the anticipated market effective date.[5]

Currently, a reverse stock split is considered a ''Substitution Listing Event'' under Listing Rule 5005(a)(44).[6] Listing Rule 5250(e)(4) requires a company to notify Nasdaq about any ''Substitution Listing Event (other than a re-incorporation or a change to a Company's place of organization) no later than 15 calendar days prior to the implementation of such event by filing the appropriate form as designated by Nasdaq.'' Although there is no dedicated requirement for public disclosure of a reverse stock split under Nasdaq's current rules, Listing Rule 5250(b)(1) requires the company to make ''prompt disclosure'' of ''any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions,'' which includes reverse stock splits. While promptly is not defined, Nasdaq has published an FAQ clarifying that ''[t]his disclosure should be disseminated prior to, or in conjunction with, the announcements that Corporate Data Operations will

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 5550(a)(2) specifies that a Company that has its Primary Equity Security listed on the Capital Market must have a minimum bid price of at least $1 per share. *See* also Rule 5450(a)(1) (Global and Global Select Markets). Companies are afforded a grace period pursuant to Rule 5810(c)(3)(A) to regain compliance.

[4] Nasdaq intends to separately submit a rule filing g to adopt a new regulatory halt specific to the pre-market trading and opening of a Nasdaq-listed security undergoing a reverse stock split.

[5] For example, if a company desires to effect a reverse stock split with a market effective date of Monday, July 24, the company would have to provide Nasdaq with a draft of the disclosure required by proposed Rule 5250(b)(4) and a complete Company Event Notification Form by 12:00 p.m. ET on Monday, July 17, and provide the public disclosure by 12:00 p.m. ET by Thursday, July 20. Note that this example presumes that there are no holidays during these dates.

[6] Listing Rule 5505(a)(44) states, in part, that a ''Substitution Listing Event'' means: a reverse stock split, re-incorporation or a change in the Company's place of organization, the formation of a holding company that replaces a listed Company, reclassification or exchange of a Company's listed shares for another security, the listing of a new class of securities in substitution for a previously-listed class of securities, a business combination described in IM–5101–2, a change in the obligor of a listed debt security, or any technical change whereby the Shareholders of the original Company receive a share-for-share interest in the new Company without any change in their equity position or rights.

make on the day prior to the market effective date at approximately 1:00 p.m.'' [7]

Nasdaq proposes to delete the existing reference to a reverse stock split in Listing Rule 5005(a)(44) and adopt new provisions to set forth the timeframe and requirements for notification and disclosure related to reverse stock splits within its listing rules. Specifically, Nasdaq proposes to add new Listing Rules 5250(b)(4), 5250(e)(7) and IM–5250–3. Nasdaq also proposes to amend Listing Rule 5250(b)(1) to specify that a company should refer to Rule 5250(b)(4) and Rule 5250(e)(7) for the disclosure and notification requirements related to a reverse stock split and to clarify that existing times in that rule refer to Eastern Time.

Proposed Listing Rule 5250(b)(4) will specify that a company must provide public notice about a reverse stock split using a Regulation FD compliant method no later than 12:00 p.m. ET at least two (2) business days prior to the proposed market effective date. As is currently required under IM–5250–1, and as with other news, prior notice of this disclosure must be made to the MarketWatch Department through the electronic disclosure submission system available at *https://www.nasdaq.net,* except in emergency situations,[8] when notification may instead be provided by telephone or facsimile. Proposed Listing Rule 5250(b)(4) will also specify that the company shall provide notice of such disclosure to Nasdaq's MarketWatch Department at least ten minutes prior to public announcement if the public release of the material information is made between 7:00 a.m. to 8:00 p.m. ET. If the public release of this information is made outside the hours of 7:00 a.m. to 8:00 p.m. ET, Nasdaq Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET.

Proposed Listing Rule 5250(e)(7) will specify that, for a reverse stock split, the company must notify Nasdaq by submitting a complete Company Event Notification Form [9] no later than 12:00 p.m. ET five (5) business days prior to the proposed market effective date.[10] The submission must include all information required by the form and a draft of the disclosure required by proposed Rule 5250(b)(4).

Proposed IM–5250–3 repeats the requirements of proposed Rules 5250(b)(4) and (e)(7) to provide issuers and market participants with additional transparency by having all information related to the reverse split process in one location in the rulebook.

Where Nasdaq receives a timely and complete notification of a reverse stock split, which is also timely disclosed, as required by proposed Listing Rules 5250(b)(4) and 5250(e)(7), Nasdaq will process the reverse stock split for the identified market effective date.[11] However, proposed Listing Rule 5250(e)(7) will specify that where Nasdaq does not receive a timely and complete notification [12] or where the reverse stock split is not timely and accurately disclosed, as required by proposed Listing Rule 5250(b)(4), Nasdaq will not process a reverse stock split until those requirements have been satisfied. If a company takes legal action, such as under state law or in any other manner, to effect a reverse stock split notwithstanding its failure to timely satisfy these requirements, or Nasdaq determines that the company has provided incomplete or inaccurate information about either the timing or ratio of the reverse stock split in the public disclosure required under proposed Rule 5250(e)(4) [sic], Nasdaq will halt the stock in accordance with the procedure set forth in Equity 4, Rule 4120(a)(1), which provides Nasdaq with the authority to halt trading to permit the dissemination of material news.

Nasdaq believes the proposed amendments will provide additional transparency and clarity to companies and market participants by specifying the notification and disclosure requirements related to reverse stock splits. The requirement for companies to submit a completed Company Event Notification Form no later than 12:00 p.m. ET five business days prior to the market effective date will help ensure that Nasdaq has timely and complete information to process the reverse stock split prior to the effective date, such as the split ratio; new CUSIP number; dates of board approval, shareholder approval, and DTC eligibility; and the effective date of the reverse stock split. Moreover, by shortening the deadline for the notification from 15 calendar days to five business days, Nasdaq believes that companies will be able to provide complete information in a single submission of the form, which they often cannot do today. For example, currently some companies may submit a form without CUSIP information, and then will email the CUSIP information to Nasdaq a few days later. Other companies may not yet have received confirmation of DTC eligibility, and receive it closer to the market effective date of the reverse stock split. Furthermore, where a company is conducting a reverse stock split to demonstrate compliance with the minimum $1 bid price requirement, a company may need to modify the ratio of the reverse stock split after providing initial notice due to changes in market conditions and the company's stock price. As such, the shorter time frame will simplify a company's ability to provide the information required by the form because all relevant information can be provided in one submission closer to the action date and thereby improve Nasdaq's processing of the forms and reduce the possibility of errors resulting from multiple updates to the forms through various communication channels.[13]

The requirement under proposed Rule 5250(e)(7) for companies to submit a draft of the Regulation FD disclosure required by proposed Rule 5250(b)(4) will help ensure that the information disseminated to the market by the company aligns with Nasdaq's announcement, including the split ratio and market effective date. The

[7] *See* Nasdaq FAQ #317, available at *https://listingcenter.nasdaq.com/Material_search.aspx?materials=317&mcd=LQ&criteria=2&cid=120%2C1%2C145%2C108%2C157%2C14%2C22%2C126%2C142%2C29%2C107%2C34%2C37%2C38%2C45%2C16%2C110%2C52%2C71%2C156%2C69%0A%0A*. These announcements are published as Equity Corporate Action Alerts on *https://www.nasdaqtrader.com/* (the ''Nasdaq Trader website'').

[8] *See* IM–5250–1, which states that examples of an emergency situation include: lack of computer or internet access; technical problems on either the Company or Nasdaq system or an incompatibility between those systems; and a material development such that no draft disclosure document exists, but immediate notification to MarketWatch is important based on the material event.

[9] The text of this section of the proposed Company Event Notification Form is included as Exhibit 3 to Nasdaq's rule filing submitted to the Commission on Form 19b–4, which includes information such as the split ratio; new CUSIP number; dates of board approval, shareholder approval, and DTC eligibility; and the effective date of the reverse stock split.

[10] Nasdaq will review the form to determine whether the submission includes all information required by the form and a draft of the disclosure required by proposed Rule 5250(b)(4).

[11] *See* note 4, *supra.* If that proposed rule filing is approved, then, as described in that rule filing, Nasdaq would halt the pre-market trading of the security in accordance with the procedure set forth in proposed Equity 4, Rule 4120A(c), and open the security for trading in accordance with the procedure set forth in proposed Equity 4, Rule 4120A(d).

[12] *See* proposed Rule 5250(e)(7) requiring the company to ''file a complete Company Event Notification Form'' containing ''all information required by the form. . . .'' Thus, for example, Nasdaq will not process a proposed reverse stock split if the Company Event Notification Form does not include the new CUSIP number or a split ratio if the press release contains a split ratio or market effective date that is inconsistent with the draft submission previously provided to Nasdaq.

[13] Nasdaq represents that the five business day timeframe still provides sufficient time for Nasdaq to process the notification.

requirement under proposed Rule 5250(b)(4) for a company to make public disclosure about a reverse stock split no later than 12:00 p.m. ET two business days prior to the market effective date will help ensure that sufficient notice is provided to market participants, thereby allowing them to process the event in their systems. Currently, the Nasdaq Trader website announcement and the company's press release are published the day prior to the reverse split, and includes material information such as the CUSIP number and split ratio. If a market participant inadvertently misses the announcement, they may continue to accept orders at the pre-split price, rather than the post-split adjusted price, which could lead to volatility in the stock price and trading inaccurate share amounts.[14] In connection with the proposed amendments, Nasdaq would publish an announcement through the Nasdaq Trader website one and two business days prior to the market effective date.[15] Therefore, proposed Rule 5250(b)(4) would provide market participants with at least one additional business day to review the company's public disclosure about the reverse stock split and update their systems. Accordingly, Nasdaq believes that the proposed rule changes will help maintain fair and orderly markets, protect investors and the public interest.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Further, the Exchange believes that this proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Nasdaq believes that shortening the current notification requirement from 15 days to five will allow companies to provide complete submissions, whereas the current 15-day requirement results in incomplete submissions that must be updated. As discussed in more detail above, this will simplify Nasdaq's processing of the forms and reduce the possibility of errors resulting from these multiple updates through multiple communication mediums. Nasdaq also believes that the minimum two business day public notice will allow market participants to timely update their systems, which will help to reduce the risk that investors and brokers inadvertently miss the public announcement of the reverse split, and continue to make or accept trades at the pre-split price, as described above. Therefore, requiring additional notification and disclosure requirements for reverse stock splits will help to support fair and orderly trading, which will reduce trading volatility and potential price mistakes, thereby protecting investors and the public interest.

Nasdaq believes the proposal is not designed to permit unfair discrimination among companies because the proposal will apply to all companies instituting a reverse stock split. Any disclosure burden placed on these companies, as opposed to companies that are not effecting a reverse stock split, is reasonable and not unfairly discriminatory because reverse stock splits present unique potential risks to investors and market participants if they fail to adjust their quotes and orders or are not aware of the accurate split ratio. This creates the potential for substantial financial, operational, client, reputational and regulatory impacts should an error occur. Therefore, Nasdaq believes that it is not unfairly discriminatory to require greater transparency to investors through public disclosure containing material information, such as the company's split ratio and market effective date, thereby maintaining fair and orderly trading, protecting investors and promoting the public interest consistent with Section 6(b)(5) of the Act.

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. The proposed amendments would not impose any burden on competition, not necessary or appropriate in furtherance of the purposes of the Act, because the proposed listing standards will apply to all listed companies. Further, the Exchange believes the proposal will not impose a burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change is designed to protect investors and facilitate a fair and orderly market, which are both important purposes of the Act. To the extent that there is any impact on intermarket competition, it is incidental to these objectives. Moreover, other exchanges can adopt rules similar to the Exchange's proposal if they believe the proposed disclosures would create a competitive advantage for Nasdaq.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NASDAQ–2023–025 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.

[14] For example, if a company conducts a 1-for-10 reverse stock split, and the pre-split price was $1, the post-split price should be approximately $10. However, if a market participant fails to update its systems, it could input orders to sell the security for $1, which could negatively impact the stock's trading price and cause market confusion. This could also result in a broker selling more shares than customers held in their accounts, resulting in a temporary short position.

[15] A company may publish a press release earlier than two business days prior to the market effective date of the reverse stock split. However, Nasdaq will only publish an announcement through the Nasdaq Trader website one and two business days prior to the reverse stock split. For example, if a company publishes a press release on Monday announcing a reverse stock split with a market effective date on Friday, Nasdaq will only publish an announcement through the Nasdaq Trader website on Wednesday and Thursday.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

All submissions should refer to file number SR–NASDAQ–2023–025. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2023–025 and should be submitted on or before August 24, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16499 Filed 8–2–23; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98019; File No. SR–CboeBYX–2023–012]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.9(f) To Allow Match Trade Prevention Between Users That Access the Exchange With Both a Direct Connection and Sponsored Access

July 28, 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 July 26, 2023, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') proposes to amend Exchange Rule 11.9(f) (''Match Trade Prevention (''MTP'') Modifiers'') to permit individual firms with Users that access the Exchange through a direct connection and also access the Exchange through Sponsored Access to enable Match Trade Prevention at the firm level. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.9(f) (''Match Trade Prevention (''MTP'') Modifiers'') to add the term ''Multiple Access identifier'' to the definition of ''Unique Identifier'' while also codifying how a User may utilize the Multiple Access identifier. Adding a Multiple Access identifier to MTP functionality on the Exchange would allow Users that electronically access the Exchange via their own Membership and Exchange connection(s), as well as Sponsored Participants[5] that access the Exchange via a Sponsored Access[6] arrangement, to enable MTP at the firm level, in addition to the current MTP functionality based on market participant identifier (''MPID''), Exchange Member identifier, trading group identifier, Exchange Sponsored Participant identifier, or affiliate identifier (any such existing identifier, a ''Unique Identifier'').[7]

Currently, the Exchange's MTP functionality prevents certain contra side orders entered by a User[8] from executing, provided that each order has been marked with the same Unique Identifier.[9] MTP functionality is currently available only to individual or affiliated Users on the Exchange and cannot be enabled by Users who choose

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Exchange Rule 1.5(x). The term ''Sponsored Participant'' shall mean a person which has entered into a sponsorship arrangement with a Sponsoring Member pursuant to Rule 11.3.

[6] *See* Exchange Rule 11.3(a). ''Sponsored Access'' shall mean ''an arrangement whereby a Member permits its customer to enter orders into the 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.''

[7] *See* Exchange Rule 11.9(f).

[8] *See* Exchange Rule 1.5(cc). ''User'' is defined as ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' The ''System'' is ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.'' *See* Exchange Rule 1.5(aa). The term ''Member'' means any registered broker or dealer that has been admitted to membership in the Exchange. *See* Exchange Rule 1.5(n).

[9] *Supra* note 7.

to access the Exchange through both a direct connection as well as through a Sponsored Access arrangement because such Users do not have the same Unique Identifier.

As noted above, there are currently five Unique Identifiers that a User may choose from when submitting an order subject to MTP: (i) MPID; [10] (ii) Exchange Member identifier; (iii) trading group identifier; (iv) Exchange Sponsored Participant identifier, and (v) affiliate identifier.[11] MTP functionality is optional for Users and is not automatically implemented by the Exchange. Both the buy and the sell order must include the same Unique Identifier in order to prevent an execution from occurring and to effect a cancel instruction.

For example, a User who enables MTP functionality using the MPID Unique Identifier will prevent contra side executions between the same MPID from occurring. A User who enables MTP using the Exchange Member Unique Identifier would prevent contra side executions between any MPID associated with that User and not just a single MPID. The trading group Unique Identifier permits Users to prevent matched trades amongst traders or desks within a certain firm but allows orders from outside such group or desk to interact with other firm orders. Users who enable MTP functionality using the Exchange Sponsored Participant Unique Identifier will prevent matched trades between contra side orders with an identical Sponsored Participant identifier. The affiliate identifier is a Unique Identifier that permits MTP to be enabled by firms with a control relationship. The affiliate identifier is only available to Users where: (i) greater than 50% ownership is identified in a User's Form BD; and (ii) the Users execute an affidavit stating that a control relationship exists between the two Users. The Exchange is not proposing any change in functionality for the current Unique Identifiers described above.

The Exchange now proposes to amend Rule 11.9(f) and enhance its existing MTP functionality by introducing a sixth Unique Identifier, Multiple Access identifier, which will allow a User to prevent orders entered via its direct connection from interacting with the User's orders entered via Sponsored Access. Currently, MTP is only available to individual and affiliated Users. However, there are certain situations (discussed *infra*) in which an individual firm may access the Exchange through different methods (*i.e.,* through a direct connection and through Sponsored Access) and therefore desires to enable MTP in order to prevent orders submitted through its direct connection from interacting with those orders submitted through Sponsored Access.

The Multiple Access identifier is similar to the affiliate identifier that is already in place, as it will enable firms that currently enter orders on the Exchange under two different Unique Identifiers to assign the same Unique Identifier to orders entered via its direct connection and to orders entered via Sponsored Access. This will permit the firm to enable MTP and prevent contra side orders from executing. While the affiliate identifier requires Users to prove that an affiliate relationship exists between the two Users,[12] the proposed Multiple Access identifier will only require a User to demonstrate: (i) it maintains a Membership on the Exchange through which it directly submits orders to the System; and (ii) it also operates as a Sponsored Participant and submits orders to the System through Sponsored Access. The proposed addition of the Multiple Access identifier does not present any new or novel MTP functionality, but rather would extend existing MTP functionality to firms that already access the Exchange through multiple formats and therefore have different Unique Identifiers appended to their orders.

By way of example, there are situations where an individual firm would choose to submit orders to the Exchange through different mechanisms. For instance, a firm may employ different trading strategies across different trading desks and choose to send orders for one strategy to the Exchange through a direct connection while the other strategy is sent through Sponsored Access. The proposed functionality would serve as an additional tool that Users may enable in order to assist with compliance with the various securities laws relating to potentially manipulative trading activity such as wash sales [13] and self-trades.[14] Additionally, the proposed functionality would provide firms an additional solution to manage order flow by preventing undesirable executions where the firm submits orders in multiple formats (*i.e.,* direct connection or Sponsored Access). As is the case with the existing risk tools, Users, and not the Exchange, have full responsibility for ensuring that their orders comply with applicable securities rules, laws, and regulations. Furthermore, as is the case with the existing risk settings, the Exchange does not believe that the use of the proposed MTP functionality can replace User-managed risk management solutions.

The Exchange is proposing to allow firms that submit orders to the Exchange through both a direct connection and through Sponsored Access to utilize MTP by utilizing the Multiple Access identifier.[15] Specifically, the Exchange is proposing to allow individual firms who choose to access the System through both a direct connection and through Sponsored Access to use MTP functionality in order to prevent executions from occurring between those separate Users that are associated with the direct connection and Sponsored Access. When a firm requests MTP using the Multiple Access identifier and the Exchange confirms that the individual firm is both a Member that accesses the Exchange through a direct connection and maintains a Sponsored Participant relationship on the Exchange, the Exchange will assign an identical Multiple Access identifier to each User. This Multiple Access identifier will be used to prevent executions between contra side orders entered by the Users assigned the same Multiple Access identifier. The purpose of this proposed change is to extend MTP functionality

[10] An MPID is a four-character unique identifier that is approved by the Exchange and assigned to a Member for use on the Exchange to identify the Member firm on the orders sent to the Exchange and resulting executions.

[11] *Supra* note 7.

[12] *See* Exchange Rule 11.9(f). *See also* 17 CFR 230.405. An *affiliate* of, or person *affiliated* with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

[13] A ''wash sale'' is generally defined as a trade involving no change in beneficial ownership that is intended to produce the false appearance of trading and is strictly prohibited under both the federal securities laws and FINRA rules. *See, e.g.*, 15 U.S.C. 78i(a)(1); FINRA Rule 6140(b) (''Other Trading Practices'').

[14] Self-trades are ''transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve no change in beneficial ownership of the security.'' FINRA requires members to have policies and procedures in place that are reasonably designed to review trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks. *See* FINRA Rule 5210, Supplementary Material .02.

[15] The Exchange will require firms requesting to use the Multiple Access identifier to complete an affidavit stating: (i) it is currently a Member of the Exchange that submits orders directly to the System, and (ii) it also submits orders to the System through a Sponsored Access arrangement.

to separate Users originating from the same individual firm in order to prevent transactions between the firm's orders submitted directly to the System and through Sponsored Access.

To demonstrate how MTP will operate with the proposed Multiple Access identifier, the Exchange has included examples of potential scenarios in which MTP may be used by individual Users utilizing the Multiple Access identifier. For all examples below, User A represents Firm 1 accessing the System through a direct connection. User B also represents Firm 1 but where Firm 1 is accessing the System as a Sponsored Participant through a Sponsoring Member.[16] User A and User B will use a Multiple Access identifier of ''A'' when requesting MTP at the Multiple Access level, as both Users submit Firm 1's orders to the System. User C is not related to Users A and B and uses a Multiple Access identifier of ''C''.

Multiple Access Level MTP

Scenario 1: User A submits a buy order. User B submits a sell order. User C also submits a sell order. User A has enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User B has enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User C has not enabled MTP. User A's buy order is prevented from executing with User B's sell order as each User has enabled MTP at the Multiple Access level using an Multiple Access identifier of A. User A's buy order will be permitted to execute with User C's sell order because User C has not enabled MTP.

Scenario 2: User A submits a buy order. User B submits a sell order. User C also submits a sell order. User A has enabled MTP at the Multiple Access level using an Multiple Access identifier of A. User B has not enabled MTP. User C has enabled MTP at the Multiple Access level using a Multiple Access identifier of C. User A's order will be eligible to trade with both User B and User C. User A's order is eligible to trade with User B because User B did not enable MTP. In order for MTP to prevent the matching of contra side orders, both the buy and sell order must contain an MTP modifier. User A's order is also eligible to trade with User C because even though User A and User C have both enabled MTP at the Multiple Access level, User A and User C have been assigned different Multiple Access identifiers.

Scenario 3: User A submits a buy order and a sell order. User B submits a buy order. User A has enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User B has enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User A's buy order is not eligible to execute with User A's sell order because User A has enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User A's sell order is not eligible to execute with User B's buy order because both User A and User B have enabled MTP at the Multiple Access level using a Multiple Access identifier of A.

Scenario 4: User A submits a buy order and a sell order. User B submits a sell order. User C submits a sell order. User A has enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User B has enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User C has enabled MTP at the Multiple Access level using a Multiple Access identifier of C. User A's buy order is not eligible to execute with User A's sell order because User A has enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User A's buy order is not eligible to execute with User B's sell order because both User A and User B have enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User A's buy order is eligible to execute with User C's sell order because while User A and User C have enabled MTP at the Multiple Access level, User A and User C have been assigned different Multiple Access identifiers.

The Exchange plans to implement the proposed rule change during the third quarter of 2023 and will announce the implementation date via Trade Desk Notice.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[18] 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)[19] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed Multiple Access level MTP functionality promotes just and equitable principles of trade by allowing individual firms to better manage order flow and prevent undesirable trading activity such as wash sales''[20] or self-trades[21] that may occur as a result of the velocity of trading in today's high-speed marketplace. The proposed Multiple Access identifier and description of eligibility to utilize the proposed Multiple Access identifier does not introduce any new or novel functionality, as the proposed amendment does not seek to change the underlying MTP functionality, but merely extends the current MTP functionality to another trading relationship. For instance, a User may operate trading desk 1 that accesses the Exchange via the User's direction connection, as well as trading desk 2 that access the Exchange as a Sponsored Participant. While these desks may operate different trading strategies, a User may desire to prevent these desks from trading versus each other in the marketplace because the orders are originating from the same entity. Here, Users may desire MTP functionality on a Multiple Access level that will help them achieve compliance[22] with regulatory rules regarding wash sales and self-trades in a very similar manner to the way that the current MTP functionality applies on the existing Unique Identifier level. In this regard, the proposed Multiple Access level MTP functionality will permit individual firms associated with different Users for purposes of

[16] *See* Exchange Rule 1.5(y). A ''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 resulting 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.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *Id.*

[20] *Supra* note 13.

[21] *Supra* note 14.

[22] The Exchange reminds Users that while they may utilize MTP to help prevent potential transactions such as wash sales or self-trades, Users, not the Exchange, are ultimately responsible for ensuring that their orders comply with applicable rules, laws, and regulations.

submitting orders to the Exchange in a different manner to prevent the execution of transactions by and between the Users. The Exchange also believes that the proposed rule change is fair and equitable and is not designed to permit unfair discrimination as use of the proposed MTP functionality is optional, and its use is not a prerequisite for trading on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. MTP is an optional functionality offered by the Exchange and Users are free to decide whether to use MTP in their decision-making process when submitting orders to the Exchange.

The Exchange believes that the proposed Multiple Access identifier does not impose any intramarket competition as it seeks to enhance an existing functionality available to all Users. The Exchange is not proposing to introduce any new or novel functionality, but rather is proposing to provide an extension of its existing MTP functionality to individual firms who choose to access the System through both a direct connection and through Sponsored Access. Additionally, the proposed rule specifies which Users are eligible to use the Multiple Access identifier and will be available to any User who satisfies such criteria. MTP will continue to be an optional functionality offered by the Exchange and the addition of Multiple Access level MTP will not change how the current Unique Identifiers and MTP functionality operate.

The Exchange believes that the proposed Multiple Access identifier does not impose any undue burden on intermarket competition. MTP is an optional functionality offered by the Exchange and Users are not required to use MTP functionality when submitting orders to the Exchange. Further, the Exchange is not required to offer MTP and is choosing to do so as a benefit for Users who wish to enable MTP functionality. Moreover, the proposed change is not being submitted for competitive reasons, but rather to provide Users enhanced order processing functionality that may prevent undesirable executions by affiliated Users such as wash sales or self-trades.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [23] and Rule 19b–4(f)(6) [24] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [25] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[26] the Commission may designate a shorter time if 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 waiver of the 30-day operative delay will allow the Exchange to immediately offer its Users that access the Exchange's System through a direct connection and through Sponsored Access the ability to better manage order flow and prevent undesirable executions, such as wash sales and self-trades, in the same manner as Users who currently enable MTP at the MPID, Exchange Member identifier, trading group identifier, Exchange Sponsored Participant, or affiliate identifier levels. 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.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBYX–2023–012 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–CboeBYX–2023–012. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 240.19b–4(f)(6)(iii).

[27] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBYX–2023–012 and should be submitted on or before August 24, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16504 Filed 8–2–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98022; File No. SR–CboeBZX–2023–054]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.9(f) To Allow Match Trade Prevention Between Users That Access the Exchange With Both a Direct Connection and Sponsored Access

July 28, 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 July 26, 2023, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend Exchange Rule 11.9(f) (''Match Trade Prevention (''MTP'') Modifiers'') to permit individual firms with Users that access the Exchange through a direct connection and also access the Exchange through Sponsored Access to enable Match Trade Prevention at the firm level. The text of the proposed rule change is provided in Exhibit 5.

The proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.9(f) (''Match Trade Prevention (''MTP'') Modifiers'') to add the term ''Multiple Access identifier'' to the definition of ''Unique Identifier'' while also codifying how a User may utilize the Multiple Access identifier. Adding a Multiple Access identifier to MTP functionality on the Exchange would allow Users that electronically access the Exchange via their own Membership and Exchange connection(s), as well as Sponsored Participants[5] that access the Exchange via a Sponsored Access[6] arrangement, to enable MTP at the firm level, in addition to the current MTP functionality based on market participant identifier (''MPID''), Exchange Member identifier, trading group identifier, Exchange Sponsored Participant identifier, or affiliate identifier (any such existing identifier, a ''Unique Identifier'').[7]

Currently, the Exchange's MTP functionality prevents certain contra side orders entered by a User[8] from executing, provided that each order has been marked with the same Unique Identifier.[9] MTP functionality is currently available only to individual or affiliated Users on the Exchange and cannot be enabled by Users who choose to access the Exchange through both a direct connection as well as through a Sponsored Access arrangement because such Users do not have the same Unique Identifier.

As noted above, there are currently five Unique Identifiers that a User may choose from when submitting an order subject to MTP: (i) MPID;[10] (ii) Exchange Member identifier; (iii) trading group identifier; (iv) Exchange Sponsored Participant identifier, and (v) affiliate identifier.[11] MTP functionality is optional for Users and is not automatically implemented by the Exchange. Both the buy and the sell order must include the same Unique Identifier in order to prevent an execution from occurring and to effect a cancel instruction.

For example, a User who enables MTP functionality using the MPID Unique Identifier will prevent contra side executions between the same MPID from occurring. A User who enables MTP using the Exchange Member Unique Identifier would prevent contra side executions between any MPID associated with that User and not just a single MPID. The trading group Unique Identifier permits Users to prevent matched trades amongst traders or desks within a certain firm but allows orders from outside such group or desk to interact with other firm orders. Users who enable MTP functionality using the Exchange Sponsored Participant Unique Identifier will prevent matched trades between contra side orders with an identical Sponsored Participant identifier. The affiliate identifier is a Unique Identifier that permits MTP to be enabled by firms with a control relationship. The affiliate identifier is only available to Users where: (i) greater

[28] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Exchange Rule 1.5(x). The term ''Sponsored Participant'' shall mean a person which has entered into a sponsorship arrangement with a Sponsoring Member pursuant to Rule 11.3.

[6] *See* Exchange Rule 11.3(a). ''Sponsored Access'' shall mean ''an arrangement whereby a Member permits its customer to enter orders into the 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.''

[7] *See* Exchange Rule 11.9(f).

[8] *See* Exchange Rule 1.5(cc). ''User'' is defined as ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' The ''System'' is ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.'' *See* Exchange Rule 1.5(aa). The term ''Member'' means any registered broker or dealer that has been admitted to membership in the Exchange. *See* Exchange Rule 1.5(n).

[9] *Supra* note 7.

[10] An MPID is a four-character unique identifier that is approved by the Exchange and assigned to a Member for use on the Exchange to identify the Member firm on the orders sent to the Exchange and resulting executions.

[11] *Supra* note 7.

than 50% ownership is identified in a User's Form BD; and (ii) the Users execute an affidavit stating that a control relationship exists between the two Users. The Exchange is not proposing any change in functionality for the current Unique Identifiers described above.

The Exchange now proposes to amend Rule 11.9(f) and enhance its existing MTP functionality by introducing a sixth Unique Identifier, Multiple Access identifier, which will allow a User to prevent orders entered via its direct connection from interacting with the User's orders entered via Sponsored Access. Currently, MTP is only available to individual and affiliated Users. However, there are certain situations (discussed *infra*) in which an individual firm may access the Exchange through different methods (*i.e.,* through a direct connection and through Sponsored Access) and therefore desires to enable MTP in order to prevent orders submitted through its direct connection from interacting with those orders submitted through Sponsored Access.

The Multiple Access identifier is similar to the affiliate identifier that is already in place, as it will enable firms that currently enter orders on the Exchange under two different Unique Identifiers to assign the same Unique Identifier to orders entered via its direct connection and to orders entered via Sponsored Access. This will permit the firm to enable MTP and prevent contra side orders from executing. While the affiliate identifier requires Users to prove that an affiliate relationship exists between the two Users,[12] the proposed Multiple Access identifier will only require a User to demonstrate: (i) it maintains a Membership on the Exchange through which it directly submits orders to the System; and (ii) it also operates as a Sponsored Participant and submits orders to the System through Sponsored Access. The proposed addition of the Multiple Access identifier does not present any new or novel MTP functionality, but rather would extend existing MTP functionality to firms that already access the Exchange through multiple formats and therefore have different Unique Identifiers appended to their orders.

By way of example, there are situations where an individual firm would choose to submit orders to the Exchange through different mechanisms. For instance, a firm may employ different trading strategies across different trading desks and choose to send orders for one strategy to the Exchange through a direct connection while the other strategy is sent through Sponsored Access. The proposed functionality would serve as an additional tool that Users may enable in order to assist with compliance with the various securities laws relating to potentially manipulative trading activity such as wash sales [13] and self-trades.[14] Additionally, the proposed functionality would provide firms an additional solution to manage order flow by preventing undesirable executions where the firm submits orders in multiple formats (*i.e.,* direct connection or Sponsored Access). As is the case with the existing risk tools, Users, and not the Exchange, have full responsibility for ensuring that their orders comply with applicable securities rules, laws, and regulations. Furthermore, as is the case with the existing risk settings, the Exchange does not believe that the use of the proposed MTP functionality can replace User-managed risk management solutions.

The Exchange is proposing to allow firms that submit orders to the Exchange through both a direct connection and through Sponsored Access to utilize MTP by utilizing the Multiple Access identifier.[15] Specifically, the Exchange is proposing to allow individual firms who choose to access the System through both a direct connection and through Sponsored Access to use MTP functionality in order to prevent executions from occurring between those separate Users that are associated with the direct connection and Sponsored Access. When a firm requests MTP using the Multiple Access identifier and the Exchange confirms that the individual firm is both a Member that accesses the Exchange through a direct connection and maintains a Sponsored Participant relationship on the Exchange, the Exchange will assign an identical Multiple Access identifier to each User. This Multiple Access identifier will be used to prevent executions between contra side orders entered by the Users assigned the same Multiple Access identifier. The purpose of this proposed change is to extend MTP functionality to separate Users originating from the same individual firm in order to prevent transactions between the firm's orders submitted directly to the System and through Sponsored Access.

To demonstrate how MTP will operate with the proposed Multiple Access identifier, the Exchange has included examples of potential scenarios in which MTP may be used by individual Users utilizing the Multiple Access identifier. For all examples below, User A represents Firm 1 accessing the System through a direct connection. User B also represents Firm 1 but where Firm 1 is accessing the System as a Sponsored Participant through a Sponsoring Member.[16] User A and User B will use a Multiple Access identifier of ''A'' when requesting MTP at the Multiple Access level, as both Users submit Firm 1's orders to the System. User C is not related to Users A and B and uses a Multiple Access identifier of ''C''.

Multiple Access Level MTP

Scenario 1: User A submits a buy order. User B submits a sell order. User C also submits a sell order. User A has enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User B has enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User C has not enabled MTP. User A's buy order is prevented from executing with User B's sell order as each User has enabled MTP at the Multiple Access level using an Multiple Access identifier of A. User A's buy order will be permitted to execute with User C's sell order because User C has not enabled MTP.

Scenario 2: User A submits a buy order. User B submits a sell order. User C also submits a sell order. User A has enabled MTP at the Multiple Access level using an Multiple Access identifier

[12] *See* Exchange Rule 11.9(f). *See also* 17 CFR 230.405. An *affiliate* of, or person *affiliated* with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

[13] A ''wash sale'' is generally defined as a trade involving no change in beneficial ownership that is intended to produce the false appearance of trading and is strictly prohibited under both the federal securities laws and FINRA rules. *See, e.g.,* 15 U.S.C 78i(a)(1); FINRA Rule 6140(b) (''Other Trading Practices'').

[14] Self-trades are ''transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve no change in beneficial ownership of the security.'' FINRA requires members to have policies and procedures in place that are reasonably designed to review trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks. *See* FINRA Rule 5210, Supplementary Material .02.

[15] The Exchange will require firms requesting to use the Multiple Access identifier to complete an affidavit stating: (i) it is currently a Member of the Exchange that submits orders directly to the System, and (ii) it also submits orders to the System through a Sponsored Access arrangement.

[16] *See* Exchange Rule 1.5(y). A ''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 resulting 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.

of A. User B has not enabled MTP. User C has enabled MTP at the Multiple Access level using a Multiple Access identifier of C. User A's order will be eligible to trade with both User B and User C. User A's order is eligible to trade with User B because User B did not enable MTP. In order for MTP to prevent the matching of contra side orders, both the buy and sell order must contain an MTP modifier. User A's order is also eligible to trade with User C because even though User A and User C have both enabled MTP at the Multiple Access level, User A and User C have been assigned different Multiple Access identifiers.

Scenario 3: User A submits a buy order and a sell order. User B submits a buy order. User A has enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User B has enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User A's buy order is not eligible to execute with User A's sell order because User A has enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User A's sell order is not eligible to execute with User B's buy order because both User A and User B have enabled MTP at the Multiple Access level using a Multiple Access identifier of A.

Scenario 4: User A submits a buy order and a sell order. User B submits a sell order. User C submits a sell order. User A has enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User B has enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User C has enabled MTP at the Multiple Access level using a Multiple Access identifier of C. User A's buy order is not eligible to execute with User A's sell order because User A has enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User A's buy order is not eligible to execute with User B's sell order because both User A and User B have enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User A's buy order is eligible to execute with User C's sell order because while User A and User C have enabled MTP at the Multiple Access level, User A and User C have been assigned different Multiple Access identifiers.

The Exchange plans to implement the proposed rule change during the third quarter of 2023 and will announce the implementation date via Trade Desk Notice.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[18] 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)[19] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed Multiple Access level MTP functionality promotes just and equitable principles of trade by allowing individual firms to better manage order flow and prevent undesirable trading activity such as wash sales'' [20] or self-trades[21] that may occur as a result of the velocity of trading in today's high-speed marketplace. The proposed Multiple Access identifier and description of eligibility to utilize the proposed Multiple Access identifier does not introduce any new or novel functionality, as the proposed amendment does not seek to change the underlying MTP functionality, but merely extends the current MTP functionality to another trading relationship. For instance, a User may operate trading desk 1 that accesses the Exchange via the User's direction connection, as well as trading desk 2 that access the Exchange as a Sponsored Participant. While these desks may operate different trading strategies, a User may desire to prevent these desks from trading versus each other in the marketplace because the orders are originating from the same entity. Here, Users may desire MTP functionality on a Multiple Access level that will help them achieve compliance[22] with regulatory rules regarding wash sales and self-trades in a very similar manner to the way that the current MTP functionality applies on the existing Unique Identifier level. In this regard, the proposed Multiple Access level MTP functionality will permit individual firms associated with different Users for purposes of submitting orders to the Exchange in a different manner to prevent the execution of transactions by and between the Users. The Exchange also believes that the proposed rule change is fair and equitable and is not designed to permit unfair discrimination as use of the proposed MTP functionality is optional, and its use is not a prerequisite for trading on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. MTP is an optional functionality offered by the Exchange and Users are free to decide whether to use MTP in their decision-making process when submitting orders to the Exchange.

The Exchange believes that the proposed Multiple Access identifier does not impose any intramarket competition as it seeks to enhance an existing functionality available to all Users. The Exchange is not proposing to introduce any new or novel functionality, but rather is proposing to provide an extension of its existing MTP functionality to individual firms who choose to access the System through both a direct connection and through Sponsored Access. Additionally, the proposed rule specifies which Users are eligible to use the Multiple Access identifier and will be available to any User who satisfies such criteria. MTP will continue to be an optional functionality offered by the Exchange and the addition of Multiple Access level MTP will not change how the current Unique Identifiers and MTP functionality operate.

The Exchange believes that the proposed Multiple Access identifier does not impose any undue burden on intermarket competition. MTP is an optional functionality offered by the Exchange and Users are not required to use MTP functionality when submitting orders to the Exchange. Further, the Exchange is not required to offer MTP and is choosing to do so as a benefit for

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *Id.*

[20] *Supra* note 13.

[21] *Supra* note 14.

[22] The Exchange reminds Users that while they may utilize MTP to help prevent potential transactions such as wash sales or self-trades, Users, not the Exchange, are ultimately responsible for ensuring that their orders comply with applicable rules, laws, and regulations.

Users who wish to enable MTP functionality. Moreover, the proposed change is not being submitted for competitive reasons, but rather to provide Users enhanced order processing functionality that may prevent undesirable executions by affiliated Users such as wash sales or self-trades.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [23] and Rule 19b–4(f)(6) [24] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [25] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[26] the Commission may designate a shorter time if 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 waiver of the 30-day operative delay will allow the Exchange to immediately offer its Users that access the Exchange's System through a direct connection and through Sponsored Access the ability to better manage order flow and prevent undesirable executions, such as wash sales and self-trades, in the same manner as Users who currently enable MTP at the MPID, Exchange Member identifier, trading group identifier, Exchange Sponsored Participant, or affiliate identifier levels. 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.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–054 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–2023–054. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2023–054 and should be submitted on or before August 24, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16507 Filed 8–2–23; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 240.19b–4(f)(6)(iii).

[27] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[28] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98021; File No. SR-CboeEDGX–2023–049]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.10(d) To Allow EdgeRisk Self Trade Protection Between Users That Access the Exchange With Both a Direct Connection and Sponsored Access

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 July 26, 2023, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''''EDGX'''') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange 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.

[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).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to amend Exchange Rule 11.10(d) (''EdgeRisk Self Trade Protection (''ERSTP'') Modifiers'') to permit individual firms with Users that access the Exchange through a direct connection and also access the Exchange through Sponsored Access to enable EdgeRisk Self Trade Protection at the firm level.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.10(d) (''EdgeRisk Self Trade Protection (''ERSTP'') Modifiers'') to add the term ''Multiple Access identifier'' to the definition of ''Unique Identifier'' while also codifying how a User may utilize the Multiple Access identifier. Adding a Multiple Access identifier to ERSTP functionality on the Exchange would allow Users that electronically access the Exchange via their own Membership and Exchange connection(s), as well as Sponsored Participants [5] that access the Exchange via a Sponsored Access [6] arrangement, to enable ERSTP at the firm level, in addition to the current ERSTP functionality based on market participant identifier (''MPID''), Exchange Member identifier, ERSTP Group identifier, or affiliate identifier (any such existing identifier, a ''Unique Identifier'').[7]

Currently, the Exchange's ERSTP functionality prevents certain contra side orders entered by a User [8] from executing, provided that each order has been marked with the same Unique Identifier.[9] ERSTP functionality is currently available only to individual or affiliated Users on the Exchange and cannot be enabled by Users who choose to access the Exchange through both a direct connection as well as through a Sponsored Access arrangement because such Users do not have the same Unique Identifier.

As noted above, there are currently four Unique Identifiers that a User may choose from when submitting an order subject to ERSTP: (i) MPID; [10] (ii) Exchange Member identifier; (iii) ERSTP Group identifier; and (iv) affiliate identifier.[11] ERSTP functionality is optional for Users and is not automatically implemented by the Exchange. Both the buy and the sell order must include the same Unique Identifier in order to prevent an execution from occurring and to effect a cancel instruction.

For example, a User who enables ERSTP functionality using the MPID Unique Identifier will prevent contra side executions between the same MPID from occurring. A User who enables ERSTP using the Exchange Member Unique Identifier would prevent contra side executions between any MPID associated with that User and not just a single MPID. The ERSTP Group Unique Identifier permits Users to prevent matched trades amongst traders or desks within a certain firm but allows orders from outside such group or desk to interact with other firm orders. The affiliate identifier is a Unique Identifier that permits ERSTP to be enabled by firms with a control relationship. The affiliate identifier is only available to Users where: (i) greater than 50% ownership is identified in a User's Form BD; and (ii) the Users execute an affidavit stating that a control relationship exists between the two Users. The Exchange is not proposing any change in functionality for the current Unique Identifiers described above.

The Exchange now proposes to amend Rule 11.10(d) and enhance its existing ERSTP functionality by introducing a fifth Unique Identifier, Multiple Access identifier, which will allow a User to prevent orders entered via its direct connection from interacting with the User's orders entered via Sponsored Access. Currently, ERSTP is only available to individual and affiliated Users. However, there are certain situations (discussed *infra*) in which an individual firm may access the Exchange through different methods (*i.e.,* through a direct connection and through Sponsored Access) and therefore desires to enable ERSTP in order to prevent orders submitted through its direct connection from interacting with those orders submitted through Sponsored Access.

The Multiple Access identifier is similar to the affiliate identifier that is already in place, as it will enable firms that currently enter orders on the Exchange under two different Unique Identifiers to assign the same Unique Identifier to orders entered via its direct connection and to orders entered via Sponsored Access. This will permit the firm to enable ERSTP and prevent contra side orders from executing. While the affiliate identifier requires Users to prove that an affiliate relationship exists between the two Users,[12] the proposed Multiple Access identifier will only require a User to demonstrate: (i) it maintains a Membership on the Exchange through which it directly submits orders to the System; and (ii) it also operates as a Sponsored Participant and submits orders to the System through Sponsored Access. The proposed addition of the Multiple Access identifier does not present any new or novel ERSTP functionality, but rather would extend existing ERSTP functionality to firms

[5] *See* Exchange Rule 1.5(z). The term ''Sponsored Participant'' shall mean a person which has entered into a sponsorship arrangement with a Sponsoring Member pursuant to Rule 11.3.

[6] *See* Exchange Rule 11.3(a). ''Sponsored Access'' shall mean ''an arrangement whereby a Member permits its customer to enter orders into the 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.''

[7] *See* Exchange Rule 11.10(d).

[8] *See* Exchange Rule 1.5(ee). ''User'' is defined as ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' The ''System'' is ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.'' *See* Exchange Rule 1.5(cc). The term ''Member'' means any registered broker or dealer that has been admitted to membership in the Exchange. *See* Exchange Rule 1.5(n).

[9] *Supra* note 7.

[10] An MPID is a four-character unique identifier that is approved by the Exchange and assigned to a Member for use on the Exchange to identify the Member firm on the orders sent to the Exchange and resulting executions.

[11] *Supra* note 7.

[12] *See* Exchange Rule 11.10(d). *See also* 17 CFR 230.405. An *affiliate* of, or person *affiliated* with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

that already access the Exchange through multiple formats and therefore have different Unique Identifiers appended to their orders.

By way of example, there are situations where an individual firm would choose to submit orders to the Exchange through different mechanisms. For instance, a firm may employ different trading strategies across different trading desks and choose to send orders for one strategy to the Exchange through a direct connection while the other strategy is sent through Sponsored Access. The proposed functionality would serve as an additional tool that Users may enable in order to assist with compliance with the various securities laws relating to potentially manipulative trading activity such as wash sales [13] and self-trades.[14] Additionally, the proposed functionality would provide firms an additional solution to manage order flow by preventing undesirable executions where the firm submits orders in multiple formats (*i.e.,* direct connection or Sponsored Access). As is the case with the existing risk tools, Users, and not the Exchange, have full responsibility for ensuring that their orders comply with applicable securities rules, laws, and regulations. Furthermore, as is the case with the existing risk settings, the Exchange does not believe that the use of the proposed ERSTP functionality can replace User-managed risk management solutions.

The Exchange is proposing to allow firms that submit orders to the Exchange through both a direct connection and through Sponsored Access to utilize ERSTP by utilizing the Multiple Access identifier.[15] Specifically, the Exchange is proposing to allow individual firms who choose to access the System through both a direct connection and through Sponsored Access to use ERSTP functionality in order to prevent executions from occurring between those separate Users that are associated with the direct connection and Sponsored Access. When a firm requests ERSTP using the Multiple Access identifier and the Exchange confirms that the individual firm is both a Member that accesses the Exchange through a direct connection and maintains a Sponsored Participant relationship on the Exchange, the Exchange will assign an identical Multiple Access identifier to each User. This Multiple Access identifier will be used to prevent executions between contra side orders entered by the Users assigned the same Multiple Access identifier. The purpose of this proposed change is to extend ERSTP functionality to separate Users originating from the same individual firm in order to prevent transactions between the firm's orders submitted directly to the System and through Sponsored Access.

To demonstrate how ERSTP will operate with the proposed Multiple Access identifier, the Exchange has included examples of potential scenarios in which ERSTP may be used by individual Users utilizing the Multiple Access identifier. For all examples below, User A represents Firm 1 accessing the System through a direct connection. User B also represents Firm 1 but where Firm 1 is accessing the System as a Sponsored Participant through a Sponsoring Member.[16] User A and User B will use a Multiple Access identifier of ''A'' when requesting ERSTP at the Multiple Access level, as both Users submit Firm 1's orders to the System. User C is not related to Users A and B and uses a Multiple Access identifier of ''C''.

Multiple Access Level ERSTP

Scenario 1: User A submits a buy order. User B submits a sell order. User C also submits a sell order. User A has enabled ERSTP at the Multiple Access level using a Multiple Access identifier of A. User B has enabled ERSTP at the Multiple Access level using a Multiple Access identifier of A. User C has not enabled ERSTP. User A's buy order is prevented from executing with User B's sell order as each User has enabled ERSTP at the Multiple Access level using a Multiple Access identifier of A. User A's buy order will be permitted to execute with User C's sell order because User C has not enabled ERSTP.

Scenario 2: User A submits a buy order. User B submits a sell order. User C also submits a sell order. User A has enabled ERSTP at the Multiple Access level using a Multiple Access identifier of A. User B has not enabled ERSTP. User C has enabled ERSTP at the Multiple Access level using a Multiple Access identifier of C. User A's order will be eligible to trade with both User B and User C. User A's order is eligible to trade with User B because User B did not enable ERSTP. In order for ERSTP to prevent the matching of contra side orders, both the buy and sell order must contain an ERSTP modifier. User A's order is also eligible to trade with User C because even though User A and User C have both enabled ERSTP at the Multiple Access level, User A and User C have been assigned different Multiple Access identifiers.

Scenario 3: User A submits a buy order and a sell order. User B submits a buy order. User A has enabled ERSTP at the Multiple Access level using a Multiple Access identifier of A. User B has enabled ERSTP at the Multiple Access level using a Multiple Access identifier of A. User A's buy order is not eligible to execute with User A's sell order because User A has enabled ERSTP at the Multiple Access level using a Multiple Access identifier of A. User A's sell order is not eligible to execute with User B's buy order because both User A and User B have enabled ERSTP at the Multiple Access level using a Multiple Access identifier of A.

Scenario 4: User A submits a buy order and a sell order. User B submits a sell order. User C submits a sell order. User A has enabled ERSTP at the Multiple Access level using a Multiple Access identifier of A. User B has enabled ERSTP at the Multiple Access level using a Multiple Access identifier of A. User C has enabled ERSTP at the Multiple Access level using a Multiple Access identifier of C. User A's buy order is not eligible to execute with User A's sell order because User A has enabled ERSTP at the Multiple Access level using a Multiple Access identifier of A. User A's buy order is not eligible to execute with User B's sell order because both User A and User B have enabled ERSTP at the Multiple Access level using a Multiple Access identifier of A. User A's buy order is eligible to execute with User C's sell order because while User A and User C have enabled ERSTP at the Multiple Access level, User A and User C have been assigned different Multiple Access identifiers.

[13] A ''wash sale'' is generally defined as a trade involving no change in beneficial ownership that is intended to produce the false appearance of trading and is strictly prohibited under both the federal securities laws and FINRA rules. *See, e.g.,* 15 U.S.C. 78i(a)(1); FINRA Rule 6140(b) (''Other Trading Practices'').

[14] Self-trades are ''transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve no change in beneficial ownership of the security.'' FINRA requires members to have policies and procedures in place that are reasonably designed to review trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks. *See* FINRA Rule 5210, Supplementary Material .02.

[15] The Exchange will require firms requesting to use the Multiple Access identifier to complete an affidavit stating: (i) it is currently a Member of the Exchange that submits orders directly to the System, and (ii) it also submits orders to the System through a Sponsored Access arrangement.

[16] *See* Exchange Rule 1.5(y). A ''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 resulting 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.

The Exchange plans to implement the proposed rule change during the third quarter of 2023 and will announce the implementation date via Trade Desk Notice.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[18] 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)[19] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed Multiple Access level ERSTP functionality promotes just and equitable principles of trade by allowing individual firms to better manage order flow and prevent undesirable trading activity such as wash sales'' [20] or self-trades[21] that may occur as a result of the velocity of trading in today's high-speed marketplace. The proposed Multiple Access identifier and description of eligibility to utilize the proposed Multiple Access identifier does not introduce any new or novel functionality, as the proposed amendment does not seek to change the underlying ERSTP functionality, but merely extends the current ERSTP functionality to another trading relationship. For instance, a User may operate trading desk 1 that accesses the Exchange via the User's direction connection, as well as trading desk 2 that access the Exchange as a Sponsored Participant. While these desks may operate different trading strategies, a User may desire to prevent these desks from trading versus each other in the marketplace because the orders are originating from the same entity. Here, Users may desire ERSTP functionality on a Multiple Access level that will help them achieve compliance[22] with regulatory rules regarding wash sales and self-trades in a very similar manner to the way that the current ERSTP functionality applies on the existing Unique Identifier level. In this regard, the proposed Multiple Access level ERSTP functionality will permit individual firms associated with different Users for purposes of submitting orders to the Exchange in a different manner to prevent the execution of transactions by and between the Users. The Exchange also believes that the proposed rule change is fair and equitable and is not designed to permit unfair discrimination as use of the proposed ERSTP functionality is optional, and its use is not a prerequisite for trading on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. ERSTP is an optional functionality offered by the Exchange and Users are free to decide whether to use ERSTP in their decision-making process when submitting orders to the Exchange.

The Exchange believes that the proposed Multiple Access identifier does not impose any intramarket competition as it seeks to enhance an existing functionality available to all Users. The Exchange is not proposing to introduce any new or novel functionality, but rather is proposing to provide an extension of its existing ERSTP functionality to individual firms who choose to access the System through both a direct connection and through Sponsored Access. Additionally, the proposed rule specifies which Users are eligible to use the Multiple Access identifier and will be available to any User who satisfies such criteria. ERSTP will continue to be an optional functionality offered by the Exchange and the addition of Multiple Access level ERSTP will not change how the current Unique Identifiers and ERSTP functionality operate.

The Exchange believes that the proposed Multiple Access identifier does not impose any undue burden on intermarket competition. ERSTP is an optional functionality offered by the Exchange and Users are not required to use ERSTP functionality when submitting orders to the Exchange. Further, the Exchange is not required to offer ERSTP and is choosing to do so as a benefit for Users who wish to enable ERSTP functionality. Moreover, the proposed change is not being submitted for competitive reasons, but rather to provide Users enhanced order processing functionality that may prevent undesirable executions by affiliated Users such as wash sales or self-trades.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[23] and Rule 19b–4(f)(6)[24] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[25] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[26] the Commission may designate a shorter time if 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 waiver of the 30-day operative delay will allow the Exchange to immediately offer its Users that access the Exchange's System through a direct connection and through Sponsored Access the ability to better manage order flow and prevent undesirable executions, such as wash sales and self-trades, in the same manner as Users who currently enable ERSTP at the MPID, Exchange Member identifier, ERSTP Group identifier, or

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *Id.*

[20] *Supra* note 13.

[21] *Supra* note 14.

[22] The Exchange reminds Users that while they may utilize ERSTP to help prevent potential transactions such as wash sales or self-trades, Users, not the Exchange, are ultimately responsible for ensuring that their orders comply with applicable rules, laws, and regulations.

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 240.19b–4(f)(6)(iii).

affiliate identifier levels. 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.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeEDGX–2023–049 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–CboeEDGX–2023–049. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeEDGX–2023–049 and should be submitted on or before August 24, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Dated: July 28, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16506 Filed 8–2–23; 8:45 am]

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[27] 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).

[28] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–513, OMB Control No. 3235–0571]

Submission for OMB Review; Comment Request; Extension: Rule 206(4)–6

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Rule 206(4)–6'' under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) (''Advisers Act'') and the collection has been approved under OMB Control No. 3235–0571. The Commission adopted rule 206(4)–6 (17 CFR 275.206(4)–6), the proxy voting rule, to address an investment adviser's fiduciary obligation to clients who have given the adviser authority to vote their securities. Under the rule, an investment adviser that exercises voting authority over client securities is required to: (i) adopt and implement policies and procedures that are reasonably designed to ensure that the adviser votes securities in the best interest of clients, including procedures to address any material conflict that may arise between the interest of the adviser and the client; (ii) disclose to clients how they may obtain information on how the adviser has voted with respect to their securities; and (iii) describe to clients the adviser's proxy voting policies and procedures and, on request, furnish a copy of the policies and procedures to the requesting client. The rule is designed to assure that advisers that vote proxies for their clients vote those proxies in their clients' best interest and provide clients with information about how their proxies were voted.

Rule 206(4)–6 contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The collection is mandatory and responses to the disclosure requirement are not kept confidential.

The respondents are investment advisers registered with the Commission that vote proxies with respect to clients' securities. Advisory clients of these investment advisers use the information required by the rule to assess investment advisers' proxy voting policies and procedures and to monitor the advisers' performance of their proxy voting activities. The information required by Advisers Act rule 204–2, a recordkeeping rule, also is used by the Commission staff in its examination and oversight program. Without the information collected under the rules, advisory clients would not have information they need to assess the adviser's services and monitor the adviser's handling of their accounts, and the Commission would be less efficient and effective in its programs.

The estimated number of investment advisers subject to the collection of information requirements under the rule is 14,003. It is estimated that each of these advisers is required to spend on average 10 hours annually documenting its proxy voting procedures under the requirements of the rule, for a total burden of 140,030 hours. We further estimate that on average, approximately 350 clients of each adviser would

request copies of the underlying policies and procedures. We estimate that it would take these advisers 0.1 hours per client to deliver copies of the policies and procedures, for a total burden of 490,105 hours. Accordingly, we estimate that rule 206(4)–6 results in an annual aggregate burden of collection for SEC-registered investment advisers of a total of 630,135 hours.

Records related to an adviser's proxy voting policies and procedures and proxy voting history are separately required under the Advisers Act recordkeeping rule 204–2 (17 CFR 275.204–2). The standard retention period required for books and records under rule 204–2 is five years, in an easily accessible place, the first two years in an appropriate office of the investment adviser. OMB has previously approved the collection with this retention period.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by September 5, 2023 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: July 31, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16542 Filed 8–2–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–203, OMB Control No. 3235–0195]

Submission for OMB Review; Comment Request; Extension: Rule 17Ab2–1 and Form CA–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17Ab2–1 (17 CFR 240.17Ab2–1) and Form CA–1: Registration of Clearing Agencies (17 CFR 249b.200) under the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*).

Rule 17Ab2–1 and Form CA–1 require clearing agencies to register with the Commission and to meet certain requirements with regard to, among other things, the clearing agency's organization, capacities, and rules. The information is collected from the clearing agency upon the initial application for registration on Form CA–1. Thereafter, information is collected by amendment to the initial Form CA–1 when changes in circumstances that render certain information on Form CA–1 inaccurate, misleading, or incomplete necessitate modification of the information previously provided to the Commission.

The Commission uses the information disclosed on Form CA–1 to (i) determine whether an applicant meets the standards for registration set forth in Section 17A of the Exchange Act, (ii) enforce compliance with the Exchange Act's registration requirement, and (iii) provide information about specific registered clearing agencies for compliance and investigatory purposes. Without Rule 17Ab2–1, the Commission could not perform these duties as statutorily required.

The Commission staff estimates that the average Form CA–1 requires approximately 340 hours to complete and submit for approval, and that on average, the Commission receives one application each year. The Commission staff estimates that completion of an initial Form CA–1 will result in an internal cost of compliance of approximately $145,360 per year. The Commission staff estimates that it receives one amendment per year, and that an amendment requires approximately 60 hours of the exempt or registered clearing agency's staff time. The Commission staff estimates that amendment of a filed Form CA–1 will result in an internal cost of compliance of approximately $28,020 per year. Therefore, the aggregate hour burden is approximately 400 hours per year (340 + 60) and the aggregate internal cost of compliance is approximately $173,380 per year ($145,360 + $28,020).

The external costs associated with work on Form CA–1 include fees charged by outside lawyers and accountants to assist the applicant or registrant to collect and prepare the information sought by the form (though such consultations are not required by the Commission). The Commission staff estimates that these external costs are more likely when novel questions arise under a new application, rather than under periodic review and amendment. The staff estimates an annual external cost of 45 hours of an Attorney's time (estimated at $462 per hour) and 10 hours of a Senior Accountant's time (estimated at $241 per hour) for preparation of the Form CA–1, resulting in an aggregate external cost of approximately $23,200 per year ($20,790 + $2,410).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by September 5, 2023 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: July 31, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16546 Filed 8–2–23; 8:45 am]

BILLING CODE 8011–01–P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from the Bi-State Regional Commission's Quad Cities Metropolitan Planning Organization (WB23–45—7/25/23) for permission to use select data from the Board's annual 2021 masked Carload Waybill Sample. A copy of this request may be obtained from the Board's website under Docket No. WB23–45.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2023–16586 Filed 8–2–23; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0154; FMCSA–2013–0124; FMCSA–2014–0385; FMCSA–2016–0002; FMCSA–2018–0138; FMCSA–2020–0027]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for seven individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The exemptions are applicable on August 13, 2023. The exemptions expire on August 13, 2025. Comments must be received on or before September 5, 2023.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2012–0154, Docket No. FMCSA–2013–0124, Docket No. FMCSA–2014–0385, Docket No. FMCSA–2016–0002, Docket No. FMCSA–2018–0138, or Docket No. FMCSA–2020–0027 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2012–0154, FMCSA–2013–0124, FMCSA–2014–0385, FMCSA–2016–0002, FMCSA–2018–0138, or FMCSA–2020–0027) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

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 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. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2012–0154, Docket No. FMCSA–2013–0124, Docket No. FMCSA–2014–0385, Docket No. FMCSA–2016–0002, Docket No. FMCSA–2018–0138, or Docket No. FMCSA–2020–0027), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number (FMCSA–2012–0154, FMCSA–2013–0124, FMCSA–2014–0385, FMCSA–2016–0002, FMCSA–2018–0138, or FMCSA–2020–0027) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2012–0154, FMCSA–2013–0124, FMCSA–2014–0385, FMCSA–2016–0002, FMCSA–2018–0138, or FMCSA–2020–0027) 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 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.

C. 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

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 also allow the Agency to renew exemptions at the end of the 5-year period. 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 physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the

better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

The seven individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the seven applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The seven drivers in this notice remain in good standing with the Agency. In addition, for commercial driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of August 13, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Jason Clark (MO)
Timothy Finley (CA)
William Jones (MN)
David Presley (TX)
Michael Smith (CO)
Donald Taylor (NC)
Holly Wright, Jr. (NC)

The drivers were included in docket numbers FMCSA–2012–0154, FMCSA–2013–0124, FMCSA–2014–0385, FMCSA–2016–0002, FMCSA–2018–0138, FMCSA–2020–0027. Their exemptions are applicable as of August 13, 2023 and will expire on August 13, 2025.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) each driver must report any crashes or accidents as defined in § 390.5T; and (2) report all citations and convictions for disqualifying offenses under 49 CFR parts 383 and 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (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 before it was 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).

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 seven exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41(b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–16597 Filed 8–2–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0212; FMCSA–2017–0253; FMCSA–2020–0049; FMCSA–2021–0025]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for five 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 are applicable on August 13, 2023. The exemptions expire on August 13, 2025. Comments must be received on or before September 5, 2023.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2014–0212, Docket No. FMCSA–2017–0253, Docket No. FMCSA–2020–0049, or Docket No. FMCSA–2021–0025 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2014–0212, FMCSA–2017–0253, FMCSA–2020–0049, or FMCSA–2021–0025) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

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. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2014–0212, Docket No. FMCSA–2017–0253, Docket No. FMCSA–2020–0049, or Docket No. FMCSA–2021–0025), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number (FMCSA–2014–0212, FMCSA–2017–0253, FMCSA–2020–0049, or FMCSA–2021–0025) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2014–0212, FMCSA–2017–0253, FMCSA–2020–0049, or FMCSA–2021–0025) 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 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.

C. 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

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 also 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 physical qualification standard for drivers regarding epilepsy found in 49 CFR 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.

The five individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the five applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The five drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. In addition, for commercial driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of August 13, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following five individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Diego DaSilva (MA)

[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.*

Jaime Dougherty (MN)
Jeffrey Douglass (ME)
Christopher Nonnenkamp (MO)
Angel Velez-Cruz (NJ)

The drivers were included in docket number FMCSA–2014–0212, FMCSA–2017–0253, FMCSA–2020–0049, or FMCSA–2021–0025. Their exemptions are applicable as of August 13, 2023, and will expire on August 13, 2025.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (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 § 390.5; 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 his/her driver's qualification file if he/she is 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. The exemption will be rescinded if: (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 before it was 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).

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 on its evaluation of the five exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–16596 Filed 8–2–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0035]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 21 individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a commercial motor vehicle (CMV) to drive in interstate commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: Comments must be received on or before September 5, 2023.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2023–0035 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2023–0035) in the keyword box and click ''Search.'' Next, click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

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 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. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2023–0035), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2023-0035/document.* Next, choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

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B. Viewing Comments

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C. 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

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 also allow the Agency to renew exemptions at the end of the 5-year period. 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 21 individuals listed in this notice have requested an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

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.

The criteria states that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the ME in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver has had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.,* drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication, and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

As a result of MEs misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified ME based on the physical qualification standards and medical best practices.

On January 15, 2013, FMCSA announced in a notice of final disposition titled, ''Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders,'' (78 FR 3069), its decision to grant requests from 22 individuals for exemptions from the regulatory requirement that interstate 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.'' Since that time, the Agency has published additional notices granting requests from individuals for exemptions from the regulatory requirement regarding epilepsy found in § 391.41(b)(8).

To be considered for an exemption from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), applicants must meet the criteria in the 2007 recommendations of the Agency's Medical Expert Panel (78 FR 3069).

III. Qualifications of Applicants

Ashley Aucion

Ashley Aucion is a 31-year-old class E license holder in Louisiana. They have a history of seizure disorder and have been seizure free since May 2014. They take anti-seizure medication with the dosage and frequency remaining the same since August 2013. Their physician states that they are supportive of Ashley Aucion receiving an exemption.

Colby Banks

Colby Banks is a 31-year-old class C license holder in North Carolina. They have a history of seizure disorder and have been seizure free since 2004. They take anti-seizure medication with the dosage and frequency remaining the same since 2006. Their physician states that they are supportive of Colby Banks receiving an exemption.

Christopher Beaver

Christopher Beaver is a 52-year-old class C license holder in Pennsylvania. They have a history of a single unprovoked seizure and have been seizure free since April 2014. They take anti-seizure medication with the dosage and frequency remaining the same since April 2014. Their physician states that they are supportive of Christopher Beaver receiving an exemption.

Emil Bigler

Emil Bigler is a 71-year-old class A commercial driver's license (CDL) holder in Utah. They have a history of isolated seizure and have been seizure free since 1990. They take anti-seizure medication with the dosage and frequency remaining the same since 1990. Their physician states that they are supportive of Emil Bigler receiving an exemption.

Timothy Brinkman

Timothy Brinkman is a 29-year-old class B CDL holder in Nebraska. They have a history of simple partial seizure disorder and have been seizure free since 2011. They take anti-seizure medication with the dosage and frequency remaining the same since March 2021. Their physician states that they are supportive of Timothy Brinkman receiving an exemption.

Alexander Carestia

Alexander Carestia is a 30-year-old class C license holder in North Carolina. They have a history of generalized convulsion epilepsy and have been seizure free since 2014. They take anti-seizure medication with the dosage and frequency remaining the same since

[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.*

2014. Their physician states that they are supportive of Alexander Carestia receiving an exemption.

Kelly Craft

Kelly Craft is a 52-year-old class D license holder in Minnesota. They have a history of focal epilepsy and have been seizure free since April 2015. They take anti-seizure medication with the dosage and frequency remaining the same since June 2021. Their physician states that they are supportive of Kelly Craft receiving an exemption.

Nathan Gager

Nathan Gager is a 40-year-old class D license holder in Minnesota. They have a history of juvenile myoclonic epilepsy and have been seizure free since 1997. They take anti-seizure medication with the dosage and frequency remaining the same since 2003. Their physician states that they are supportive of Nathan Gager receiving an exemption.

Kenneth Gradoville

Kenneth Gradoville is a 71-year-old class B CDL holder in Nebraska. They have a history of complex partial seizures and have been seizure free since 2007. They take anti-seizure medication with the dosage and frequency remaining the same since 2007. Their physician states that they are supportive of Kenneth Gradoville receiving an exemption.

Winterhawk Hunter

Winterhawk Hunter is a 43-year-old class AM CDL holder in Nevada. They have a history of epilepsy and have been seizure free since July 2000. They take anti-seizure medication with the dosage and frequency remaining the same since 2003. Their physician states that they are supportive of Winterhawk Hunter receiving an exemption.

Donald Huntley

Donald Huntley is a 23-year-old class D license holder in Ohio. They have a history of generalized epilepsy and have been seizure free since 2006. They take anti-seizure medication with the dosage and frequency remaining the same since 2019. Their physician states that they are supportive of Donald Huntley receiving an exemption.

Samuel Isenberg

Samuel Isenberg is a 64-year-old class C license holder in Pennsylvania. They have a history of gran mal seizure and have been seizure free since January 2004. They take anti-seizure medication with the dosage and frequency remaining the same since January 2014. Their physician states that they are supportive of Samuel Isenberg receiving an exemption.

Thomas Kepler

Thomas Kepler is a 34-year-old class E license holder in Missouri. They have a history of epilepsy and have been seizure free since 2014. They take anti-seizure medication with the dosage and frequency remaining the same since 2016. Their physician states that they are supportive of Thomas Kepler receiving an exemption.

Brian Manning

Brian Manning is a 47-year-old class D license holder in New Jersey. They have a history of focal seizures and have been seizure free since 2012. They take anti-seizure medication with the dosage and frequency remaining the same since 2012. Their physician states that they are supportive of Brian Manning receiving an exemption.

Devin McKain

Devin McKain is a 28-year-old operator license holder in Indiana. They have a history of seizures and have been seizure free since May 2011. They take anti-seizure medication with the dosage and frequency remaining the same since August 2017. Their physician states that they are supportive of Devin McKain receiving an exemption.

Jacob McNally

Jacob McNally is a 29-year-old class A CDL holder in Connecticut. They have a history of seizure disorder and have been seizure free since 2015. They take anti-seizure medication with the dosage and frequency remaining the same since 2015. Their physician states that they are supportive of Jacob McNally receiving an exemption.

Chris McNamara

Chris McNamara is a 60-year-old class D license holder in New Hampshire. They have a history of seizure disorder and have been seizure free since 2012. They take anti-seizure medication with the dosage and frequency remaining the same since 2020. Their physician states that they are supportive of Chris McNamara receiving an exemption.

Joseph Pitts

Joseph Pitts is a 65-year-old class BM license holder in South Carolina. They have a history of seizure disorder and have been seizure free since 1973. They take anti-seizure medication with the dosage and frequency remaining the same since 1973. Their physician states that they are supportive of Joseph Pitts receiving an exemption.

Joshua Ross

Joshua Ross is a 39-year-old class D license holder in Delaware. They have a history of focal epilepsy and have been seizure free since 2002. They take anti-seizure medication with the dosage and frequency remaining the same since October 2020. Their physician states that they are supportive of Joshua Ross receiving an exemption.

Shawn Springer

Shawn Springer is a 38-year-old class D license holder in Minnesota. They have a history of epilepsy and have been seizure free since 2007. They take anti-seizure medication with the dosage and frequency remaining the same since 2005. Their physician states that they are supportive of Shawn Springer receiving an exemption.

Ryan Webb

Ryan Webb is a 43-year-old class C Chauffeur license holder in Michigan. They have a history of myoclonic epilepsy and have been seizure free since 1999. They take anti-seizure medication with the dosage and frequency remaining the same since January 2015. Their physician states that they are supportive of Ryan Webb receiving an exemption.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice.

We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–16592 Filed 8–2–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2023–0163]

Request for Information: Center for Maritime Innovation

AGENCY: Maritime Administration (MARAD), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice requests information from the public to assist MARAD in determining how best to organize and structure a Center for Maritime Innovation (the ''Center'').

MARAD authority in this area provides the Center to support the study, research, development, assessment, and deployment of emerging marine technologies and practices related to the maritime transportation system. MARAD is seeking comments and information on the qualities, competencies, and costs required for the functioning of such a Center; its structure and organization; and suggestions and experiences establishing this kind of secretariat.

DATES: Comments must be received on or before October 2, 2023. MARAD will consider comments filed after this date to the extent practicable.

ADDRESSES: Your comments should refer to DOT Docket Number MARAD–2023–0163 and may be submitted by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Search ''MARAD–2023–0163'' and follow the instructions for submitting comments.
- *Mail/Hand-Delivery/Courier:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590. If you would like to know that your comments reached the facility, please enclose a stamped, self-addressed postcard or envelope. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m. E.T., Monday through Friday, except on Federal holidays.

To avoid duplication, please use only one of the above methods. See the ''Public Participation'' section below for instructions on submitting comments.

Unless there is a request for confidential treatment, all comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided.

You may view the public comments at *www.regulations.gov.* When searching for comments, please use the Docket ID: MARAD–2023–0163. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *www.FederalRegister.gov* and the Government Publishing Office's website at *www.GovInfo.gov.*

Note: If you mail or hand-deliver your input, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission. If you submit your inputs by mail or hand-delivery, they must be submitted in an unbound format, no larger than 8½ by 11 inches, single-sided, suitable for copying and electronic filing.

Instructions: All submissions received must include the agency name and docket number. For detailed instructions on submitting comments and additional information on the rulemaking process, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Carolyn E. Junemann, Environmental Protection Specialist, Office of Environment and Innovation, at (202) 569–3899, or via email at *META@dot.gov.* You may send mail to Dr. Junemann at Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, W25–308, Washington, DC 20590. If you have questions on viewing the Docket, call Docket Operations, telephone: (800) 647–5527.

SUPPLEMENTARY INFORMATION: Section 3543 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (NDAA), codified at 46 U.S.C 50307, directs the Secretary of Transportation, through a competitive cooperative agreement, to establish a Center to support the study, research, development, assessment, and deployment of emerging marine technologies and practices related to emerging environmental challenges faced by the maritime transportation system.

Specifically, the Center is envisioned to consist of a core advisory council that partners closely with MARAD and assigns working groups to address specific areas of concern for the industry. The Center would be run by an administrative organization that acts as a secretariat to facilitate the work of the Center and its subsidiary workgroups and functions. The Secretariat would be selected through a competitive process of eligible domestic entities, preferably a nonprofit organization. The secretariat would have competencies in facilitation and administering this type of initiative. They would also preferably have familiarity with emerging marine environmental technologies, policies, and practices related to the maritime transportation system, including the use of alternative fuels and the development of both vessel and shoreside infrastructure.

The major duties of the Center and its working groups are envisioned to include:

- facilitating the development and use of clean energy and necessary infrastructure to support the deployment of clean energy on vessels of the United States;
- monitoring and assessing, on an ongoing basis, the current state of knowledge regarding emerging marine technologies in the United States;
- identifying any significant gaps in emerging marine technologies research specific to the United States maritime industry, and seeking to fill those gaps;
- conducting research, development, testing, and evaluation for equipment, technologies, and techniques related to marine environmental protection;
- providing guidance on best available technologies;
- conducting technical analysis; assisting with understanding complex regulatory requirements; and documenting best practices in the maritime industry, including training and informational webinars on solutions for the maritime industry; and
- working with academic and private sector response training centers and Domestic Maritime Workforce Training and Education Centers of Excellence to develop maritime strategies applicable to various segments of the United States maritime industry, including the inland, deep water, and coastal fleets.

Subject matter working groups will be determined by the Center's core, but could include:

- development of technologies and practices for minimizing the introduction and spread of aquatic nuisance species;
- mitigation of vessel-generated underwater noise, and emergent environmental issues as identified by the center; and
- decarbonization of the maritime fleet through development and deployment of zero and near-zero fuels, technologies, and policies.

The purpose of this Request for Information (RFI) is to seek comments and information on:

- the qualities, competencies, and costs required for the secretariat function of such a Center;
- the proposed structure and organization detailed herein; and
- suggestions and experiences with establishing this kind of secretariat, to include but not limited to lessons learned and best practices for form, function, and administration.

Funds were not appropriated, however, insights gained from this RFI will assist MARAD in the development of a structure and framework for the Center for Maritime Innovation and guide ensuing activities, should funding become available.

Public Participation

How do I submit comments?

Include the docket number in your comments to ensure that your comments are correctly filed in the Docket. We

encourage you to provide concise comments; however, you may attach additional documents as necessary. There is no limit on the length of the attachments. Please submit your comments, including the attachments, following the instructions provided under the above-entitled heading **ADDRESSES**.

MARAD will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, MARAD will also consider comments received after that date.

For access to the docket to submit or read comments received, go to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., E.T., Monday through Friday, except on Federal holidays. To review documents, read comments or to submit comments, the docket is also available online at *www.regulations.gov,* keyword search ''MARAD–2023–0163.''

Please note that even after the comment period has closed, MARAD will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, MARAD recommends that you periodically check the Docket for new material.

Will my comments be made available to the public?

Before including your address, phone number, email address or other personal information in your comment, be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. When you submit comments containing information claimed to be confidential information, you should include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *www.transportation.gov/privacy.*

Request for Information

MARAD seeks advice and input from the public and U.S. entities who would be stakeholders participating in the Center or with competencies described above for the desired secretariat function. Please comment specifically on the following:

1. Prospective organizations for hosting the Center, detailed as follows:

(a) Preferably U.S. nonprofits, or qualities of such an organization that could serve as a potential host for undertaking the secretariat function of such a Center as described in Section 3543(e) of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023.

2. The Center's structure and organization, detailed as follows:

(a) The Center for Maritime Innovation will foster industry partnerships and active collaboration to find solutions to the most pressing maritime environmental issues in the U.S.

(b) The Center is envisioned to consist of a central executive committee that is guided by MARAD, supported by a non-profit organization to act as a secretariat, and comprised of key stakeholders primarily from the maritime industry (such as ship owners and port operators) but may include representatives from NGOs and academia.

(c) The Center would be responsible for identifying key focus areas of environmental concern to the U.S. maritime industry and developing, deploying, and administering dedicated working groups to address those subjects.

(d) The secretariat will be responsible for recruiting the Center's committee members, in consultation with MARAD, and for organizing, facilitating, and administration of the Center. Administration tasks may include hosting and facilitating meetings and workshops, identifying key issues for consideration by the committee, and facilitating the development of focus area working groups and the terms of reference that guide their activities.

3. The Center's method of work, detailed as follows:

(a) Once focus areas are determined by the Center, it will develop dedicated working groups of experts and task them to break down a problem into components that can be further analyzed in order to develop recommendations. Experts will come from both the public and private sector and be matched to the level of need and ambition for specific projects. The central executive committee will assemble periodically to monitor the progress of the working groups and adjust their tasks and resources as needed and ensure that the work is aligned with the pace and substance of MARAD's relevant strategies. At appropriate intervals, the Center will meet to assess the overall effectiveness of the Center's work and discuss whether new focus areas and resources are needed.

4. Additional information on practical considerations that can inform implementation of the Center.

(Authority: 46 U.S.C. 50307; 49 CFR 1.93(a).)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–16532 Filed 8–2–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Administrative Rulings Regulations

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comments on the proposed renewal, without change, to an information collection found in existing Bank Secrecy Act (BSA) regulations. Specifically, the regulations provide procedures for requestors to seek, and for FinCEN to issue, administrative rulings. This request for comments is made pursuant to the Paperwork Reduction Act of 1995 (PRA).

DATES: Written comments are welcome and must be received on or before October 2, 2023.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal E-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

Refer to Docket Number FINCEN–2023–0009 and the Office of Management and Budget (OMB) control number 1506–0050.

• *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2023–0009 and OMB control number 1506–0050.

Please submit comments by one method only. Comments will be reviewed consistent with the PRA [1] and applicable OMB regulations and guidance. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: FinCEN's Regulatory Support Section (RSS) at 1–800–767–2825 or electronically at *frc@fincen.gov*.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Provisions

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Foreign Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56 (October 26, 2001), and other legislation, including the Anti-Money Laundering Act of 2020 (AML Act).[2] The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1960, and 31 U.S.C. 5311–5314 and 5316–5336, and notes thereto, with implementing regulations at 31 CFR chapter X.

The BSA authorizes the Secretary of the Treasury (the ''Secretary''), *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, or regulatory matters, risk assessments or proceedings, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement AML programs and compliance procedures.[3] Regulations implementing the BSA appear at 31 CFR chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.[4]

A FinCEN administrative ruling is a written ruling interpreting the relationship between the regulations implementing the BSA at 31 CFR chapter X and each situation for which such a ruling has been requested in conformity with the regulatory requirements.[5] The regulations implementing the procedures for requestors to submit, and for FinCEN to issue, administrative rulings appear in Part 1010, Subpart G—Administrative Rulings. Specifically, the regulations address the following: (a) how to submit a request for an administrative ruling (31 CFR 1010.711); (b) treatment of non-conforming requests (31 CFR 1010.712); (c) treatment of oral communications (31 CFR 1010.713); (d) withdrawal of administrative ruling requests (31 CFR 1010.714); (e) issuance of administrative rulings (31 CFR 1010.715); (e) modification and rescission of administrative rulings (31 CFR 1010.716); and (f) disclosure of administrative ruling (31 CFR 1010.717). An administrative ruling has precedential value, and may be relied upon by others similarly situated, only if FinCEN makes it available to the public through publication on the FinCEN website or other appropriate forum.[6]

II. Paperwork Reduction Act of 1995

Title: Administrative Rulings Regulations (Subpart G—31 CFR 1010.710 through 31 CFR 1010.717).

OMB Control Number: 1506–0050.

Report Number: Not applicable.

Abstract: FinCEN is issuing this notice to renew the OMB control number for the administrative rulings regulations.

Affected Public: Businesses or other for-profit institutions, non-profit institutions, and individuals.

Type of Review: Renewal without change of a currently approved information collection.

Frequency: As required.

Estimated Number of Requests Annually: 44 requests.[7]

Estimated Recordkeeping Burden: FinCEN receives on average 44 administrative ruling requests per year. FinCEN continues to estimate that it takes a requestor approximately two hours to draft and submit an administrative rule request to FinCEN.[8] This results in an estimated total annual burden of 88 hours (44 administrative ruling requests multiplied by two hours per request).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Himamauli Das,

Acting Director, Financial Crimes Enforcement Network.

[FR Doc. 2023–16573 Filed 8–2–23; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Reports Relating to Currency in Excess of $10,000 Received in a Trade or Business or Received as Bail by Court Clerks; Form 8300

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

[1] Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

[2] The AML Act was enacted as Division F, sections 6001–6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, 134 Stat. 3388 (2021).

[3] Section 358 of the USA PATRIOT Act expanded the purpose of the BSA, by including a reference to reports and records ''that have a high degree of usefulness in intelligence or counterintelligence activities to protect against international terrorism.'' Section 6101 of the AML Act further expanded the purpose of the BSA to cover such matters as preventing money laundering, tracking illicit funds, assessing risk, and establishing appropriate frameworks for information sharing.

[4] Treasury Order 180–01 (Jan. 14, 2020).

[5] *See* 31 CFR 1010.715.

[6] *Id.* FinCEN's administrative rulings are collected on the FinCEN website at the following address: *https://www.fincen.gov/resources/statutes-regulations/administrative-rulings.*

[7] In 2020, 2021, and 2022 FinCEN received a total of 132 administrative ruling requests. 132 requests divided by 3 years equals 44 requests annually.

[8] When this OMB control number was last renewed in 2020, FinCEN estimated the total burden per requestor to draft and submit an administrative ruling request was two hours per requestor.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comments on a proposed renewal, without change, of an information collection found in existing Bank Secrecy Act regulations. Specifically, FinCEN invites comment on a renewal of existing information collection requirements for reports of currency in excess of $10,000 received by a trade or business or by court clerks as bail. These transactions are reported on Form 8300. This request for comments is made pursuant to the Paperwork Reduction Act of 1995 (PRA).

DATES: Written comments are welcome and must be received on or before October 2, 2023.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2023–0010 and the Office of Management and Budget (OMB) control number 1506–0018.
- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2023–0010 and OMB control number 1506–0018.

Please submit comments by one method only. Comments will be reviewed consistent with the PRA [1] and applicable OMB regulations and guidance. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section (RSS) at 1–800–767–2825 or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Provisions

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Foreign Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56 (October 26, 2001), and other legislation, including the Anti-Money Laundering Act of 2020 (AML Act).[2] The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1960, and 31 U.S.C. 5311–5314 and 5316–5336, and notes thereto, with implementing regulations at 31 CFR chapter X.

The BSA authorizes the Secretary of the Treasury (the ''Secretary''), *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, or regulatory matters, risk assessments or proceedings, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement AML programs and compliance procedures.[3] Regulations implementing the BSA appear at 31 CFR chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.[4]

31 U.S.C. 5331 of the BSA and 26 U.S.C. 6050I of the Internal Revenue Code require that certain transactions be reported to both FinCEN and the Internal Revenue Service (IRS) in the form and manner prescribed by the Secretary of the Treasury. Specifically, reporting is required by any person engaged in a trade or business who, in the course of such trade or business, receives more than $10,000 in coins or currency in one transaction or two or more related transactions.[5] Reporting is also required by any clerk of a federal or state court who receives more than $10,000 in currency as bail for any individual charged with a specified criminal offense.[6] Reports filed under these authorities are made through the joint FinCEN/IRS Form 8300.[7] Furthermore, verification requirements apply to transactions requiring the filing of Form 8300.[8] Reports filed under 31 CFR 1010.330 and 31 CFR 1010.331 must be maintained for five years after the date of filing.[9]

II. Paperwork Reduction Act of 1995

Title: Reports Relating to Currency in Excess of $10,000 Received in a Trade or Business or Received as Bail by Court Clerks; Form 8300 (31 CFR 1010.330 and 31 CFR 1010.331).

OMB Control Number: 1506–0018.

Form Number: Form 8300.

Abstract: FinCEN is issuing this notice to renew the OMB control number for the Form 8300 and the regulations at 31 CFR 1010.330 and 31 CFR 1010.331.

Affected Public: Businesses or other for-profit institutions, and non-profit institutions.

Type of Review: Renewal without change of a currently approved information collection.

Frequency: As required.

Estimated Number of Respondents: 35,000 Form 8300 filers.[10]

Estimated Reporting and Recordkeeping Burden: The information required to be reported on the Form 8300 is basic information to which a filer would have access in the course of doing business. For instance, the Form 8300 requires a trade or business or court clerk to report identifying information about the individual from whom the cash was received, as well as any person on whose behalf the transaction was conducted. The Form 8300 also requires the filer to report a description of the transaction and method of payment, as well as identifying information for the business that received the cash. As this information is readily available to a trade or business or court clerk, FinCEN estimates that reporting this information will take 20 minutes on average. In addition, while the Form 8300 may be filed electronically, which allows the filer to save an electronic version of the form and satisfy the recordkeeping requirement, many filers choose to file a paper copy of the Form 8300. Therefore, FinCEN estimates that the recordkeeping requirement will take 10 minutes on average. FinCEN estimates total hourly burden of reporting and recordkeeping for each Form 8300 is 30 minutes.

Estimated Total Annual Responses: 400,112 Forms 8300 were filed in calendar year 2022.

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[1] Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

[2] The AML Act was enacted as Division F, sections 6001–6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, 134 Stat. 3388 (2021).

[3] Section 358 of the USA PATRIOT Act expanded the purpose of the BSA by including a reference to reports and records ''that have a high degree of usefulness in intelligence or counterintelligence activities to protect against international terrorism.'' Section 6101 of the AML Act further expanded the purpose of the BSA to cover such matters as preventing money laundering, tracking illicit funds, assessing risk, and establishing appropriate frameworks for information sharing.

[4] Treasury Order 180–01 (Jan. 14, 2020).

[5] 31 CFR 1010.330. Pursuant to 31 CFR 1021.330(c), non-gaming businesses at casino hotels and resorts are separate trades or businesses in which the receipt of currency in excess of $10,000 is reportable under 31 U.S.C. 5331 and 31 CFR 1010.330.

[6] 31 CFR 1010.331.

[7] Currency transactions reportable under 31 U.S.C. 5313 or 31 CFR 1010.311, 1010.313, 1020.315, 1021.311, or 1021.313 are excluded from the Form 8300 reporting requirement. There are also several exceptions to the reporting requirement included in the regulation.

[8] 31 CFR 1010.330(e)(2); 31 CFR 1010.331(c)(2).

[9] 31 CFR 1010.330(e)(3); 31 CFR 1010.331(c)(1) (incorporating the requirements of 26 CFR 1.6050I–2(c)(3)(i)).

[10] In 2022, FinCEN received Forms 8300 from 34,832 unique filers based on their tax identification number (TIN). FinCEN is rounding this estimate to 35,000 respondents annually.

Estimated Total Annual Reporting and Recordkeeping Burden: The estimated total annual PRA burden is 200,056 hours (400,112 Forms 8300 filed in calendar year 2022 multiplied by 30 minutes and converted to hours).

Estimated Total Annual Reporting and Recordkeeping Cost: FinCEN estimates the following annual burden cost: 200,056 hours × $52.55 per hour [11] = $10,512,942.80.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (i) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (ii) the accuracy of the agency's estimate of the burden of the collection of information; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; (iv) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (v) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Himamauli Das,

Acting Director, Financial Crimes Enforcement Network.

[FR Doc. 2023–16576 Filed 8–2–23; 8:45 am]

BILLING CODE 4810–02–P

[11] The average hourly wage rate is calculated from the May 2022 U.S. Bureau of Labor Statistics average hourly wage for ''13–1041 Compliance Officer'' of $37.01, plus an additional 42% for benefits to produce a fully-loaded rate of $52.55. The ratio between benefits and wages for private industry workers is $11.86 (hourly benefits)/$28.37 (hourly wages) = 0.42, as of March 2023. The benefit factor is 1 plus the benefit/wages ratio, or 1.42. $37.01 multiplied by 1.42 equals $52.55. See U.S. Bureau of Labor Statistics, *Employer Costs for Employee Compensation: Private Industry dataset* (March 2023), available at *https://www.bls.gov/web/ecec/ecec-private-dataset.xlsx.*

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing an update to the identifying information of one person currently included on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List).

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://ofac.treasury.gov/*).

Notice of OFAC Action(s)

On July 28, 2023, OFAC updated the entry on the SDN List for the following person, whose property and interests in property subject to U.S. jurisdiction continue to be blocked under the relevant sanctions authority listed below.

Entity

1. TABACOS USA INC., 4500 William Penn Highway, Easton, PA 18045, United States; 3815 Bethman Road, Easton, PA 18045, United States; Organization Established Date 08 Jun 2004; Business Registration Number 3811964 (Delaware) (United States); alt. Business Registration Number 0101044929 (New Jersey) (United States); alt. Business Registration Number 0005657373 (North Dakota) (United States); alt. Business Registration Number 3331739 (Pennsylvania) (United States); alt. Business Registration Number 7686966–0143 (Utah) (United States); alt. Business Registration Number 270084 (West Virginia) (United States) [GLOMAG].

-to-

TABACOS USA INC., 4500 William Penn Highway, Easton, PA 18045, United States; Organization Established Date 08 Jun 2004; Business Registration Number 3811964 (Delaware) (United States); alt. Business Registration Number 0101044929 (New Jersey) (United States); alt. Business Registration Number 0005657373 (North Dakota) (United States); alt. Business Registration Number 3331739 (Pennsylvania) (United States); alt. Business Registration Number 7686966–0143 (Utah) (United States); alt. Business Registration Number 270084 (West Virginia) (United States) [GLOMAG].

Designated pursuant to section 1(a)(iii)(B) of Executive Order 13818 of December 20, 2017, ''Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption,'' 82 FR 60839 (Dec. 26, 2017) (E.O. 13818) for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, CARTES JARA, Horacio Manuel, a person whose property and interests in property are blocked pursuant to E.O. 13818.

Dated: July 28, 2023.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–16602 Filed 8–2–23; 8:45 am]

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FEDERAL REGISTER

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Part II

Securities and Exchange Commission

17 CFR Parts 270, 274, and 279
Money Market Fund Reforms; Form PF Reporting Requirements for Large Liquidity Fund Advisers; Technical Amendments to Form N–CSR and Form N–1A; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270, 274 and 279

[Release Nos. 33–11211; 34–97876; IA–6344; IC–34959; File No. S7–22–21]

RIN 3235–AM80

Money Market Fund Reforms; Form PF Reporting Requirements for Large Liquidity Fund Advisers; Technical Amendments to Form N–CSR and Form N–1A

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to certain rules that govern money market funds under the Investment Company Act of 1940. These amendments are designed to improve the resilience and transparency of money market funds. The amendments will revise the primary rule that governs money market funds to remove the ability for a fund board to temporarily suspend redemptions if the fund's liquidity falls below a threshold. In addition, the amendments will remove the tie between liquidity thresholds and the potential imposition of liquidity fees. The amendments will also require certain money market funds to implement a liquidity fee framework that will better allocate the costs of providing liquidity to redeeming investors. In addition, the Commission is increasing the daily liquid asset and weekly liquid asset minimum requirements to 25% and 50%, respectively. The Commission also is amending certain reporting requirements on Form N–MFP and Form N–CR and making certain conforming changes to Form N–1A to reflect amendments to the regulatory framework for money market funds. In addition, the Commission is addressing how money market funds with stable net asset values may handle a negative interest rate environment, including by adopting amendments that will permit these funds to use share cancellation, subject to certain conditions. Further, the Commission is adopting rule amendments to specify how funds must calculate weighted average maturity and weighted average life. In addition, the Commission is adopting amendments to Form PF concerning the information large liquidity fund advisers must report for the liquidity funds they advise. Finally, the Commission is adopting two technical amendments to Form N–CSR and Form N–1A to correct errors from recent Commission rulemakings.

DATES: *Effective dates:* The rule amendments are effective October 2, 2023. The amendments to Forms N–1A and N–CSR are effective October 2, 2023 and the amendments to Forms N–CR, N–MFP, and PF are effective June 11, 2024.

Compliance dates: The applicable compliance dates are discussed in section II.H.

FOR FURTHER INFORMATION CONTACT: Blair Burnett, Christian Corkery, David Driscoll, or Laura Harper Powell, Senior Counsels; Angela Mokodean, Branch Chief; or Brian M. Johnson, Assistant Director at (202) 551–6792, Investment Company Regulation Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to the following rules and forms:

Commission reference		CFR Citation (17 CFR)
Investment Company Act of 1940 (''Act'' or ''Investment Company Act'') [1]	Rule 2a–7	§ 270.2a–7.
	Rule 31a–2	§ 270.31a–2.
	Form N–MFP	§ 274.201.
	Form N–CR	§ 274.222.
Securities Act of 1933 (''Securities Act'') [2] and Investment Company Act	Form N–1A	§§ 239.15A and 274.11A.
Securities Exchange Act of 1934 (''Exchange Act'') [3] and Investment Company Act	Form N–CSR	§§ 249.331 and 274.128.
Investment Advisers Act of 1940 (''Advisers Act'')	Form PF	§ 279.9.

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[1] 15 U.S.C. 80a–1 *et seq.* Unless otherwise noted, all references to statutory sections are to the Investment Company Act, and all references to rules under the Investment Company Act are to title 17, part 270 of the Code of Federal Regulations [17 CFR part 270].

[2] 15 U.S.C. 77a *et seq.*

[3] 15 U.S.C. 78a *et seq.*

I. Introduction

The Commission is adopting amendments to rule 2a–7 under the Investment Company Act of 1940. Money market funds are a type of mutual fund registered under the Act and regulated pursuant to rule 2a–7.[4] These funds are popular cash management vehicles for both retail and institutional investors because they seek to provide investors with principal stability and access to daily liquidity. In addition, money market funds serve as an important source of short-term financing for businesses, banks, and Federal, state, municipal, and Tribal governments. In March 2020, in connection with an economic shock from the onset of the COVID–19 pandemic, certain types of money market funds had significant outflows, contributing to stress on short-term funding markets that resulted in government intervention to enhance the liquidity of such markets.[5] Our historical experience with these funds and the events of March 2020 have led us to re-evaluate certain aspects of the regulatory framework applicable to money market funds. Accordingly, the Commission is adopting amendments to rule 2a–7 and certain reporting forms that are designed to improve the resilience of money market funds during times of market stress while preserving the benefits that investors have come to expect from these funds.

In December 2021, the Commission proposed to amend rule 2a–7 to remove the tie between weekly liquid asset thresholds and the potential imposition of liquidity fees and redemption gates, since it appears these provisions contributed to investors' incentives to redeem from certain funds in March 2020 and affected fund managers' willingness to use available liquidity in their portfolios to meet redemptions.[6] For funds that experienced the heaviest outflows in March 2020 and in prior periods of market stress, the proposal also included a new swing pricing requirement that was designed to mitigate the dilution and investor harm that can occur when other investors redeem—and remove liquidity—from these funds, particularly when certain markets in which the funds invest are under stress and effectively illiquid. The Commission also proposed to increase the minimum daily and weekly liquid asset requirements to better equip money market funds to manage significant and rapid investor redemptions. In addition, we proposed certain form amendments to improve transparency and facilitate Commission monitoring of money market funds. As part of the proposal, the Commission proposed to amend rule 2a–7 to prohibit a stable net asset value (''NAV'') money market fund from using share cancellation or a reverse distribution mechanism in a negative interest rate environment.

The Commission received comment letters on the proposal from a variety of commenters, including funds and investment advisers, law firms, other fund service providers, investor advocacy groups, professional and trade associations, and interested individuals.[7] As discussed in greater detail throughout this release, these commenters expressed a diversity of views. Many commenters expressed support for aspects of the proposal, including removing the link between liquidity thresholds and the imposition of redemption gates and liquidity fees; increasing the minimum daily and weekly liquid asset requirements above current minimums; and clarifying the calculation of weighted average portfolio maturity and weighted average life maturity.[8] Many commenters, however, expressed concern about the consequences of the proposed swing pricing requirement, suggesting, among other reasons, that it would be operationally difficult and may not effectively prevent destabilizing runs during periods of stress.[9] Separately, several commenters expressed that the Commission should adopt more modest increases to the daily and weekly liquid asset requirements than proposed.[10] Many commenters also generally opposed the proposed clarification of how stable net asset value money market funds should handle a negative interest rate environment, stating that the proposed prohibition from using share cancellation in certain negative interest environments could be operationally burdensome and costly without clear benefits for investors.[11] Lastly, while some commenters were supportive of the proposed modifications to the fund reporting requirements, others expressed concern about the sensitivity or burdens of reporting certain information regarding money market fund investors or portfolios, as well as significant declines in liquidity.[12]

After considering the comments on the proposal, we are adopting rule and form amendments to improve the resilience and transparency of money market funds, with certain modifications.[13] As proposed, the final amendments will remove the redemption gate provision from rule 2a-7; increase the minimum daily and

[4] Money market funds are also sometimes called ''money market mutual funds'' or ''money funds.''

[5] *See infra* section I.B (discussing these events in more detail).

[6] Money Market Fund Reforms, Investment Company Act Release No. 34441 (Dec. 15, 2021) [87 FR 7248 (Feb. 8, 2022)] (''Proposing Release'').

[7] The comment letters on the Proposing Release (File No. S7–22–21) are available at *https://www.sec.gov/comments/s7-22-21/s72221.htm.*

[8] *See, e.g.,* Comment Letter of Investment Company Institute (Apr. 11, 2022) (''ICI Comment Letter''); Comment Letter of Americans for Financial Reform Education Fund (Apr. 11, 2022) (''Americans for Financial Reform Comment Letter'').

[9] *See, e.g.,* Comment Letter of The Asset Management Group of the Securities Industry and Financial Markets Association (Apr. 11, 2022) (''SIFMA AMG Comment Letter''); Comment Letter of State Street Global Advisors (Apr. 11, 2022) (''State Street Comment Letter'').

[10] *See, e.g.,* Comment Letter of Western Asset Management Company, LLC (Apr. 11, 2022) (''Western Asset Comment Letter''); Comment Letter of Healthy Markets Association (Apr. 12, 2022) (''Healthy Markets Association Comment Letter'').

[11] *See, e.g.,* Comment Letter of Federated Hermes Inc. (Apr. 11, 2022) (''Federated Hermes Comment Letter I''); Comment Letter of Allspring Funds Management, LLC (Apr. 11, 2022) (''Allspring Funds Comment Letter''); Comment Letter of Fidelity Management Research Company LLC (Apr. 11, 2022) (''Fidelity Comment Letter'').

[12] *See infra* section II.F.

[13] We have consulted and coordinated with the Consumer Financial Protection Bureau regarding this final rulemaking in accordance with section 1027(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

weekly liquid asset requirements to 25% and 50%, respectively; specify the weighted average portfolio maturity and weighted average life maturity calculations; and require public reporting of significant declines in liquidity on Form N–CR. However, we are not adopting the proposed swing pricing requirement. Rather, the final amendments will modify the current liquidity fee framework to require institutional prime and institutional tax-exempt money market funds to impose a liquidity fee when the fund experiences net redemptions that exceed 5% of net assets, while also allowing any non-government money market fund to impose a discretionary liquidity fee if the board determines a fee is in the best interest of the fund. Similar to the proposed swing pricing requirement, the liquidity fee framework is designed to better allocate liquidity costs associated with redemptions to the redeeming investors. In addition, in a change from the proposal, the final amendments will permit retail and government money market funds to use a reverse distribution mechanism if negative interest rates occur in the future with certain conditions, including appropriate disclosure to concisely and clearly describe to shareholders the fund's use of a reverse distribution mechanism and its effect on investors.

Moreover, while we are adopting the amended reporting requirements for Form N–MFP largely as proposed, we are making modifications to certain aspects of the requirements in response to commenter concerns about the sensitivity of publicly reporting certain investor and portfolio information. We are also adopting, largely as proposed in a January 2022 Proposing Release, amendments to Form PF reporting requirements for large liquidity fund advisers.[14] The final amendments to Form PF generally are designed to align with relevant revisions we are making to Form N–MFP. Finally, we are adopting two technical amendments to Form N–CSR and Form N–1A to correct errors from recent Commission rulemakings.

A. Role of Money Market Funds and Existing Regulatory Framework

Money market funds are managed with the goal of providing principal stability by investing in high-quality, short-term debt securities—such as Treasury bills, repurchase agreements, or commercial paper—whose value does not fluctuate significantly in normal market conditions. Money market fund investors receive dividends that reflect prevailing short-term interest rates and have access to daily liquidity, as money market fund shares are redeemable on demand. The combination of limited principal volatility, diversification of portfolio securities, payment of short-term yields, and liquidity has made money market funds popular cash management vehicles for retail and institutional investors. Money market funds also serve as an important source of short-term financing for businesses, banks, and governments.

Different types of money market funds exist to meet differing investor needs. ''Prime money market funds'' hold a variety of taxable short-term obligations issued by corporations and banks, as well as repurchase agreements and asset-backed commercial paper.[15] ''Government money market funds,'' which are currently the largest category of money market fund, almost exclusively hold obligations of the U.S. Government, including obligations of the U.S. Treasury and Federal agencies and instrumentalities, as well as repurchase agreements collateralized by government securities.[16] Compared to prime funds, government money market funds generally offer greater safety of principal but historically have paid lower yields. ''Tax-exempt money market funds'' (or ''municipal money market funds'') primarily hold obligations of state and local governments and their instrumentalities, and pay interest that is generally exempt from Federal income tax for individual taxpayers.[17] Within the prime and tax-exempt money market fund categories, some funds are ''retail'' funds and others are ''institutional'' funds. Retail money market funds are held only by natural persons, and institutional funds can be held by a wider range of investors, such as corporations, small businesses, and retirement plans.[18]

To some extent, different types of money market funds are subject to different requirements under rule 2a–7. One primary example is a fund's approach to valuation and pricing. Government and retail money market funds can rely on valuation and pricing techniques that generally allow them to sell and redeem shares at a stable share price, typically $1.00, without regard to small variations in the value of the securities in their portfolios.[19] If the fund's stable share price and market-based value per share deviate by more than one-half of 1%, the fund's board may determine to adjust the fund's share price below $1.00, which is also colloquially referred to as ''breaking the buck.'' [20] Institutional prime and institutional tax-exempt money market funds, however, are required to use a ''floating'' NAV per share to sell and redeem their shares, based on the current market-based value of the securities in their underlying portfolios rounded to the fourth decimal place (*e.g.,* $1.0000). These institutional funds are required to use a floating NAV because their investors have historically made the heaviest redemptions in times of market stress and are more likely to act on the incentive to redeem if a fund's stable price per share is higher than its market-based value.[21]

As of March 2023, there were approximately 294 money market funds registered with the Commission, and these funds collectively held over $5.7 trillion of assets.[22] The vast majority of these assets are held by government money market funds ($4.4 trillion), followed by prime money market funds ($1 trillion) and tax-exempt money

[14] Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers, Investment Advisers Act Release No. 5950 (Jan. 26, 2022) [87 FR 9106 (Feb. 17, 2022)] (''Form PF Proposing Release'').

[15] Commission staff regularly publish comprehensive data regarding money market funds on the Commission's website, *available at https://www.sec.gov/divisions/investment/mmf-statistics.shtml.* This data includes information about the monthly holdings of prime money market funds by type of security. Staff reports and other staff documents (including those cited herein) represent the views of Commission staff and are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved the content of these documents and, like all staff statements, they have no legal force or effect, do not alter or amend applicable law, and create no new or additional obligations for any person.

[16] Some government money market funds generally invest at least 80% of their assets in U.S. Treasury obligations or repurchase agreements collateralized by U.S. Treasury securities and are called ''Treasury money market funds.''

[17] In this release, we also use the term ''non-government money market fund'' to refer to prime and tax-exempt money market funds.

[18] A retail money market fund is defined as a money market fund that has policies and procedures reasonably designed to limit all beneficial owners of the fund to natural persons. *See* 17 CFR 270.2a–7(a)(21) (rule 2a–7(a)(21)).

[19] *See* Proposing Release, *supra* note 6, at n.10 (discussing amortized cost method and penny rounding cost method); *see also* 17 CFR 270.2a–7(c)(1)(i) and (g)(1) and (2). Throughout this release, we generally use the term ''stable share price'' or ''stable NAV'' to refer to the stable share price that these money market funds seek to maintain and compute for purposes of distribution, redemption, and repurchases of fund shares.

[20] These funds must compare their stable share price to the market-based value per share of their portfolios at least daily.

[21] *See* Proposing Release, *supra* note 6, at n.12.

[22] Money Market Fund Statistics, Form N–MFP Data, period ending Mar. 2023, *available at: https://www.sec.gov/files/mmf-statistics-2023-03.pdf.* This data excludes ''feeder'' funds to avoid double counting assets.

market funds ($119 billion).[23] Of prime money market funds' assets, approximately 44% are held by retail prime money market funds, with the remaining assets almost evenly split between institutional prime money market funds that are offered to the public and institutional prime money market funds that are not offered to the public.[24] The vast majority of tax-exempt money market fund assets are held by retail funds.

The Commission adopted rule 2a–7 in 1983 and has amended the rule several times over the years, including in 2010 and 2014, in response to market events that have highlighted money market fund vulnerabilities.[25] Among other things, these past reforms introduced minimum daily and weekly liquid asset requirements, provided for redemption gates and liquidity fees as available tools when a fund's liquidity drops below a threshold, required institutional money market funds to use floating NAVs, and improved transparency through reporting and website posting requirements.[26]

In addition to reforms for money market funds, in 2014 the Commission introduced new reporting requirements for large advisers of liquidity funds on Form PF to better align reporting obligations of advisers regarding private liquidity funds to those of money market funds, in order to help the Commission have a more complete picture of the broader short-term financing market.[27] Liquidity funds follow similar investment strategies as money market funds, but investment advisers are not required to register liquidity funds as investment companies under the Act. Liquidity funds are a relatively small but important category of private funds due to the role they play along with money market funds as sources, and users, of liquidity in markets for short-term financing.[28] Similar to money market funds, liquidity funds are managed with the goal of maintaining a stable net asset value or minimizing principal volatility for investors. However, liquidity funds are not required to comply with the risk-limiting conditions of rule 2a–7, such as the restrictions on the maturity, diversification, credit quality, and liquidity of investments. Consequently, liquidity funds may take on greater risks and, as a result, may be more sensitive to market stress relative to money market funds.

B. March 2020 Market Events and Need for Reform

As discussed in the Proposing Release, in March 2020, growing economic concerns about the impact of the COVID–19 pandemic led investors to reallocate their assets into cash and short-term government securities.[29] Institutional investors, in particular, sought highly liquid investments, including government money market funds.[30] In contrast, institutional prime and institutional tax-exempt money market funds experienced outflows beginning the week of March 9, 2020, which accelerated the following week.[31] Outflows from retail prime and retail tax-exempt funds began the week of March 16, a week after outflows in institutional funds began.

During the two-week period of March 11 to 24, publicly offered institutional prime funds had a 30% redemption rate (about $100 billion), which included outflows of approximately 20% of assets during the week of March 20 alone.[32] In contrast, privately offered institutional prime funds had redemptions of 3% of assets during the week of March 20, and lost approximately 6% of their total assets ($17 billion) from March 9 through 20. Retail prime funds had outflows of approximately 11% of their total assets ($48 billion) in the last three weeks of March 2020. Outflows from tax-exempt money market funds, which are mostly retail funds, were approximately 8% of their total assets ($12 billion) from March 12 through 25.

The Proposing Release discussed the potential factors that incentivized investors to redeem from certain money market funds in March 2020.[33] These factors included concerns about the potential imposition of redemption gates or liquidity fees based on observed declines in some funds' weekly liquid assets, general concerns about declining fund liquidity, general uncertainty related to a global health crisis and fears of associated economic downturns, and the need to meet near-term cash needs unrelated to the market stress. The Proposing Release also discussed data regarding the relationship between a fund's weekly liquid asset levels and the amount of outflows it experienced in March 2020. The data showed that funds with lower weekly liquid asset levels were more likely to have significant outflows in March 2020, but some funds with higher levels of liquidity also experienced large outflows.[34]

These outflows caused some money market funds to engage in greater than normal selling activity in short-term funding markets which, when combined with similar selling activity from other market participants such as hedge funds and bond mutual funds, both contributed to, and was impacted by, stress in short-term funding markets.[35] In markets for private short-term debt instruments, such as commercial paper and certificates of deposit, conditions significantly deteriorated in the second week of March 2020. These markets, in which prime money market funds and other participants invest, essentially became ''frozen'' in March 2020, making it more difficult to sell these instruments, which have limited secondary trading even in normal market conditions.[36] Similarly, stresses in short-term municipal markets contributed to pricing pressures and outflows for tax-exempt money market funds which, in turn, contributed to increased stress in municipal markets.[37] One factor that appears to have contributed to money market funds' sales of long-term portfolio securities is the incentive fund managers had to maintain weekly liquid assets above 30% in an effort to avoid investors' concerns about the possibility of redemption gates or liquidity fees under our current rule.[38]

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[23] *Id.*

[24] Some asset managers establish privately offered money market funds to manage cash balances of other affiliated funds and accounts.

[25] *See* Proposing Release, *supra* note 6, at n.16 and accompanying text (providing more detail related to previous Commission actions and government intervention following the 2008 financial crisis).

[26] Money Market Fund Reform, Investment Company Act Release No. 29132 (Feb. 23, 2010) [75 FR 10060 (Mar. 4, 2010)] (''2010 Adopting Release''); Money Market Fund Reform; Amendments to Form PF, Investment Company Act Release No. 31166 (July 23, 2014) [79 FR 47735 (Aug. 14, 2014)] (''2014 Adopting Release'').

[27] Generally, investment advisers registered (or required to be registered) with the Commission with at least $150 million in private fund assets under management must file Form PF.

[28] As of Sept. 2022, there were 79 liquidity funds reported on Form PF with $336 billion in gross assets under management.

[29] *See* SEC Staff Report on U.S. Credit Markets Interconnectedness and the Effects of the COVID–19 Economic Shock (Oct. 2020) (''SEC Staff Interconnectedness Report''), at 2, *available at https://www.sec.gov/files/US-Credit-Markets_COVID-19_Report.pdf.*

[30] More specifically, government money market funds had record inflows of $838 billion in Mar. 2020 and an additional $347 billion of inflows in Apr. 2020. *See id.* at 25.

[31] *Id.*

[32] *See* Proposing Release, *supra* note 6, at n.30.

[33] *Id.,* at n.42 and accompanying discussion.

[34] *Id.,* at n.44.

[35] *See* Proposing Release, *supra* note 6, at n.54 and accompanying discussion.

[36] *Id.*

[37] *Id.*

[38] *Id.,* at n.77 and accompanying discussion.

On March 18, 2020, the Federal Reserve, with the approval of the Department of the Treasury, broadened its program of support for the flow of credit to households and businesses by taking steps to enhance the liquidity and functioning of money markets with the establishment of the Money Market Mutual Fund Liquidity Facility (''MMLF''). The MMLF provided loans to financial institutions on advantageous terms to purchase securities from money market funds that were raising liquidity, thereby helping enhance overall market functioning and credit provisions to the broader economy.[39] MMLF utilization reached a peak of just over $50 billion in early April 2020, or about 5% of net assets in prime and tax-exempt money market funds at the time.[40] Along with other Federal Reserve actions and programs to support the short-term funding markets, the MMLF had the effect of significantly slowing outflows from prime and tax-exempt money market funds.[41] The MMLF ceased providing loans in March 2021.

Commenters generally agreed that the growing economic concerns related to the impact of the COVID–19 pandemic led investors to seek liquidity in the form of cash and short-term government securities in March 2020, leading to outflows from prime money market funds and significant inflows to government money market funds.[42] Commenters also acknowledged that the markets for private short-term debt instruments, such as commercial paper and certificates of deposit, significantly deteriorated during this period.[43] However, some commenters questioned the nexus between the liquidity crisis in the short-term funding markets and the outflows from prime money market funds, asserting that events in the money market fund market were not a significant cause of the liquidity issues in the short-term funding markets in March 2020.[44] Accordingly, some commenters suggested that any reform exclusive to money market funds by themselves will likely not address the broader liquidity challenges in the short-term funding markets.[45] Going further, a few commenters expressed that the proposed reforms would have negative impacts to the short-term funding markets because they would reduce the demand for prime money market funds, thereby reducing capacity in the short-term funding markets.[46] Some of these commenters encouraged the Commission, and policymakers more generally, to re-examine the short-term funding markets and the various events surrounding the volatility in March 2020, and to consider available tools other than reforms to the money market fund regulatory framework, that would improve resiliency in this segment of our markets.[47] Conversely, other commenters asserted that liquidity issues with money market funds served as a source of significant contagion that imperiled the short-term markets broadly and forced government intervention.[48] Some of these commenters suggested that the Commission should consider more aggressive reforms to solve the unique problems presented by money market funds, mainly that they are hybrid instruments that embody elements of both securities investments and banking products that are treated as cash-like by investors.[49]

We understand that money market funds are not the totality of the short-term funding markets and that the reforms discussed in this adopting release may not solve all future issues connected to the short-term funding markets. However, we believe the events of March 2020 evidence that money market funds need better functioning tools for managing through stress while mitigating harm to shareholders. Specifically, in addition to requiring higher liquidity minimums to prepare for significant and rapid investor redemptions, funds need to be able to use that liquidity when such redemptions occur. In addition, to prevent redeeming shareholders from diluting the interests of remaining shareholders by removing liquidity from the fund in times of market stress, when liquidity in underlying short-term funding markets is scarce and costly, funds need tools to ensure that liquidity costs are fairly allocated to redeeming investors. Moreover, while the period of market stress in March 2020 was relatively brief, it is important to consider that future stressed periods—whether specific to certain money market funds or the short-term funding markets more generally—may be more protracted or more severe than in March 2020, particularly absent Federal Reserve action. We believe that these needs for better functioning tools to manage through stress while mitigating harm to shareholders can be met while preserving the benefits that investors have come to expect from money market funds. Accordingly, we are adopting amendments to rule 2a–7 and related reporting and registration forms that are designed to achieve these key objectives and to reflect our experience with the rule since it was initially adopted in 1983.[50]

II. Discussion

A. Amendments To Remove the Tie Between the Weekly Liquid Asset Threshold and Redemption Gates and Liquidity Fees

1. Unintended Effects of the Tie Between the Weekly Liquid Asset Threshold and Liquidity Fees and Redemption Gates

Following amendments to rule 2a–7 in 2014, a money market fund has the ability to impose liquidity fees or redemption gates (generally referred to as ''fees and gates'') after crossing a specified liquidity threshold.[51] A money market fund may impose a liquidity fee of up to 2%, or temporarily suspend redemptions for up to 10 business days in a 90-day period, if the

[39] Information about the MMLF is available on the Federal Reserve's website at *https://www.federalreserve.gov/monetarypolicy/mmlf.htm*. The Federal Reserve Bank of Boston operated the MMLF.

[40] *See* Proposing Release, *supra* note 6, at n.36.

[41] *Id.,* at n.37.

[42] *See, e.g.,* ICI Comment Letter; Comment Letter of The Vanguard Group, Inc. (Apr. 11, 2022) (''Vanguard Comment Letter''); Comment Letter of Professors Samuel G. Hanson, David S. Scharfstein, and Adi Sunderam, Harvard Business School (Apr. 11, 2022) (''Prof. Hanson *et al.* Comment Letter''); Comment Letter of Blackrock (Apr. 11, 2022) (''BlackRock Comment Letter''); Comment Letter of the CFA Institute (Apr. 11, 2022) (''CFA Comment Letter'').

[43] *See, e.g.,* Comment Letter of Invesco Ltd. (Apr. 11, 2022) (''Invesco Comment Letter''); Vanguard Comment Letter; BlackRock Comment Letter (asserting that they struggled to find bids from dealer banks in the secondary market for much of the commercial paper, bank certificates of deposits, or municipal debt they were holding).

[44] *See, e.g.,* ICI Comment Letter; Federated Hermes Comment Letter I; Invesco Comment Letter; Vanguard Comment Letter; BlackRock Comment Letter; Healthy Markets Association Comment Letter.

[45] *See, e.g.,* ICI Comment Letter; Federated Hermes Comment Letter I; Invesco Comment Letter; Vanguard Comment Letter; BlackRock Comment Letter.

[46] *See, e.g.,* SIFMA AMG Comment Letter; Comment Letter of J.P. Morgan Asset Management (Apr. 11, 2022) (''JP Morgan Comment Letter'').

[47] *See, e.g.,* JP Morgan Comment Letter; Federated Hermes Comment Letter I; ICI Comment Letter (recommending adjusting bank regulations to enable banks and their dealers to expand their balance sheets to provide market liquidity during periods of market stress without materially reducing the overall resilience of those firms).

[48] *See, e.g.,* Comment Letter of Better Markets (Apr. 11, 2022) (''Better Markets Comment Letter''); CFA Comment Letter.

[49] *See, e.g.,* Better Markets Comment Letter; Prof. Hanson *et al.* Comment Letter.

[50] *See generally* Valuation of Debt Instruments and Computation of Current Price Per Share by Certain Open-End Investment Companies (Money Market Funds), Investment Company Act Release No. 13380 (July 11, 1983) [48 FR 32555 (July 18, 1983)].

[51] Government funds are permitted, but not required, to impose fees and gates, as discussed below. *See* 17 CFR 270.2a–7(c)(2); 2014 Adopting Release, *supra* note 26.

fund's weekly liquid assets fall below 30% of its total assets and the fund's board of directors determines that imposing a fee or gate is in the fund's best interests.[52] Additionally, a non-government money market fund is required to impose a liquidity fee of 1% on all redemptions if its weekly liquid assets fall below 10% of its total assets, unless the board of directors of the fund determines that imposing such a fee would not be in the best interests of the fund.[53] Separately, a money market fund is required to provide daily disclosure of the percentage of its total assets invested in weekly liquid assets (as well as daily liquid assets) on its website to provide transparency to investors and increase market discipline.[54]

Money market fund fees and gates below these thresholds were intended to serve as redemption restrictions that would provide a ''cooling off'' period to temper the effects of a short-term investor panic and preserve liquidity levels in times of market stress, as well as better allocate the costs of providing liquidity to redeeming investors.[55] However, these provisions did not achieve these objectives during the period of market stress in March 2020. As discussed in the Proposing Release, evidence suggests that in March 2020, even though no money market fund imposed a liquidity fee or gate, the possibility of their imposition after crossing the publicly disclosed 30% weekly liquid asset threshold appears to have contributed to investors' incentives to redeem from prime money market funds.[56] The presence of this threshold appears to have increased investor redemption activity as prime and tax-exempt money market funds approached the 30% weekly liquid asset level.[57] Further, this liquidity threshold also appeared to affect money market fund managers' behavior in March 2020 and contributed to incentives for money market fund managers to maintain weekly liquid asset levels above a 30% weekly liquid asset threshold, rather than use those assets to meet redemptions.[58] Thus, contrary to its intended benefit, this threshold appeared to heighten prime and tax-exempt money market funds' susceptibility to heavy redemptions as funds' publicly disclosed weekly liquid assets approached it and increased the lack of liquidity in underlying short-term funding markets in March 2020.

In addition, as discussed in the Proposing Release, it appears that money market fund investors are more sensitive to the possibility of redemption gates than the possibility of liquidity fees.[59] While liquidity fees impose a cost for an investor to redeem, gates outright stop redemptions for the duration of the gate. Money market fund investors—who typically invest in money market funds for cash management purposes—are generally sensitive to being unable to access their investments for a period of time and have a tendency to redeem from such funds preemptively if they fear a gate may be imposed.

Many commenters agreed with the Commission's assessment that the regulatory link between a known liquidity threshold and the imposition of fees and gates contributed to investors' incentives to redeem from money market funds in March 2020.[60] Many commenters also agreed with the Commission's assessment that the weekly liquid asset threshold also contributed to incentives for managers to avoid falling below this threshold.[61] One commenter suggested that removing the regulatory link between weekly liquid assets and redemption gates (and liquidity fees) would free up an additional 30% of liquidity that funds could use in a crisis similar to March 2020.[62]

Several commenters stated that the potential imposition of redemption gates in particular, as opposed to liquidity fees, drove instability and redemptions in March 2020.[63] For example, one commenter suggested that the mere possibility that fund boards may impose gates was a key factor that contributed significantly to the stresses experienced by publicly offered institutional prime funds in March 2020.[64] Another commenter stated that, based on a survey of institutional investor clients, investors were particularly concerned about gates and perceived the 30% weekly liquid asset threshold as a ''bright line'' not to be crossed.[65] An additional commenter stated that, based on data and discussions with its member funds, the possibility of a gate especially caused investors in March 2020 to redeem heavily.[66]

Thus, based on available evidence and as suggested by many commenters, the weekly liquid asset threshold for consideration of fees and gates appear to have potentially increased the risks of investor runs without providing benefits to money market funds as intended by the Commission. In addition, money market fund investors have demonstrated particular sensitivity to the possibility of gates and the corresponding lack of access to their investments, and these concerns appear to have incentivized redemptions in March 2020 more so than any concerns about the possibility of fees. Accordingly, after considering the comments received, we are adopting amendments to the fee and gate provisions in rule 2a–7 to remove the regulatory link between weekly liquid assets and fees and gates. As discussed below, we are amending rule 2a–7 to remove gate provisions altogether and amending the liquidity fee structure to remove weekly liquid asset-linked thresholds and implement a modified liquidity fee framework that will provide for both mandatory and discretionary liquidity fees. We believe these changes will provide more effective tools for money market funds to use to mitigate short-term investor panic and preserve liquidity levels in times of market stress, as well as better

[52] If, at the end of a business day, a fund has invested 30% or more of its total assets in weekly liquid assets, the fund must cease charging the liquidity fee (up to 2%) or imposing the redemption gate, effective as of the beginning of the next business day. *See* 17 CFR 270.2a–7(c)(2)(i).

[53] The board also may determine that a lower or higher fee would be in the best interests of the fund. *See* 17 CFR 270.2a–7(c)(2)(ii)(A).

[54] 17 CFR 270.2a–7(h)(10)(ii); 2014 Adopting Release, *supra* note 26, at section III.E.9.a.

[55] *See* 2014 Adopting Release, *supra* note 26, at section III.A.

[56] *See* Proposing Release, *supra* note 6, at section I.B.

[57] *See id.*

[58] *See id. See also* ICI Comment Letter; SIFMA AMG Comment Letter.

[59] *See* Proposing Release, *supra* note 5, at nn. 75–76 and accompanying text (discussing comment letters that expressed views that the possibility of redemption gates was a greater concern for investors, particularly institutional investors, in Mar. 2020 than the possibility of liquidity fees and that retail investors appeared less sensitive to fees and gates than institutional investors).

[60] *See, e.g.,* Comment Letter of Morgan Stanley Investment Management Inc. (Apr. 8, 2022) (''Morgan Stanley Comment Letter''); ICI Comment Letter; Comment Letter of Northern Trust Asset Management (Mar. 24, 2022) (''Northern Trust Comment Letter''); Fidelity Comment Letter; *see also* Proposing Release, *supra* note 6, at section II.A.1 (''Available evidence, supported by many comment letters in response to the Commission's request for comment [ ] suggested that funds' incentives to maintain weekly liquid assets above the 30% threshold were directly tied to investors' concerns about the possibility of redemption gates and liquidity fees under our rules if a fund drops below that threshold.'').

[61] *See, e.g.,* ICI Comment Letter, Comment Letter of T. Rowe Price (Apr. 11, 2022) (''T. Rowe Comment Letter''); JP Morgan Comment Letter.

[62] *See* Federated Hermes Comment Letter I.

[63] *See, e.g.,* Fidelity Comment Letter; Northern Trust Comment Letter; Comment Letter of the Institute of International Finance (Apr. 11, 2022) (''IIF Comment Letter''); ICI Comment Letter.

[64] *See* Fidelity Comment Letter.

[65] *See* JP Morgan Comment Letter.

[66] *See* ICI Comment Letter.

allocate the costs of providing liquidity to redeeming investors.

2. Removal of Redemption Gates From Rule 2a–7

We are adopting, as proposed, the removal of money market funds' ability through rule 2a–7 to temporarily suspend redemptions (*i.e.,* impose a ''gate'').[67] In the Proposing Release, we discussed our concern that gates may not be an effective tool for money market funds to stem heavy redemptions in times of stress due to money market fund investors' general sensitivity to being unable to access their investments for a period of time and tendency to redeem from funds preemptively if they fear a gate may be imposed. We believe that removing gate provisions altogether from rule 2a–7 will reduce the risk of investor runs on money market funds during periods of market stress. Money market funds will continue to be able to impose permanent gates to facilitate an orderly liquidation of a fund pursuant to 17 CFR 270.22e–3 (''rule 22e–3''), and we are not adopting any changes to that rule.[68]

Many commenters generally supported the proposal to remove redemption gates in rule 2a–7.[69] Several of these commenters stated that use of rule 22e–3 to suspend redemptions in connection with a fund liquidation would be sufficient to address scenarios in which a fund may need to suspend redemptions.[70] One such commenter suggested that any money market fund that needed to impose a gate would likely need to fully liquidate, making rule 22e–3 sufficient for these purposes.[71]

Some commenters supported removing the tie between the weekly liquid asset threshold and a fund's ability to impose a gate but suggested that gates could still be a useful tool outside of a fund liquidation. These commenters suggested that fund boards should have broader discretion to impose gates without linkage to a weekly liquid asset threshold.[72] Some commenters suggested that the rule should permit fund boards to impose a gate if the board determines a gate is in the best interests of the fund and its shareholders, subject to certain policies and procedures, disclosure, and reporting requirements.[73] Another commenter suggested that fund boards should have complete discretion with respect to imposing gates but that the SEC should require relevant disclosures.[74]

After considering these comments, we continue to believe that the removal of money market funds' ability to impose gates through rule 2a–7 is appropriate.[75] By removing the gate provision, either with or without an associated liquidity threshold, we seek to limit the potential for investor uncertainty and de-stabilizing preemptive investor redemption behavior related to the potential use of gates during stress events as well as to better encourage funds to more effectively use their existing liquidity buffers in times of stress. As discussed above, rather than providing an effective tool for money market funds to manage redemption pressures during a period of stress, the potential availability of gates under prescribed parameters exacerbated the redemption pressures experienced by some funds during March 2020.

Retaining a gate provision under rule 2a–7 without an associated liquidity threshold, as suggested by some commenters, could result in continuing investor uncertainty and may contribute to preemptive investor redemption behavior during stress events. In normal and stressed markets, shareholders may need or want to access their funds for various reasons, including to meet near-term cash needs. When in place, a gate fully inhibits the redeemability of the money market fund shares for the duration of the gate, thereby blocking shareholders' access to their shares. We believe this complete halt to redemptions, even if temporary, has the potential to significantly incentivize preemptive redemptions. As discussed above, several commenters stated that fear of gates in particular contributed to redemptions in March 2020. Removing the link to a publicly disclosed liquidity threshold seemingly would expand the current gate provisions under rule 2a–7, potentially increasing investor uncertainty regarding when a fund may impose a gate. Even if such action by a money market fund board is unlikely to occur, as suggested by some commenters,[76] the mere possibility of a gate would persist and thus investor uncertainty and fear may remain, particularly when there are signs that a fund or short-term funding markets are under stress. Accordingly, we are removing the gate provision from rule 2a–7 to avoid this unintended outcome.

In light of the proposed removal of gates under rule 2a–7, some commenters suggested additional amendments to rule 22e–3. This rule generally allows a money market fund to suspend redemptions if, among other conditions, (1) the fund has invested less than 10% of its total assets in weekly liquid assets or, in the case of a government or retail money market fund, the fund's market-based price per share has deviated or is likely to deviate from its stable price, and (2) the fund's board has approved the fund's liquidation. Some commenters suggested that the SEC remove the weekly liquid asset threshold enumerated in rule 22e–3 and give fund boards more flexibility to approve liquidations.[77] One of these commenters suggested that the weekly liquid asset threshold in rule 22e–3 would not remain meaningful because of the Commission's proposal to remove the liquidity fee provisions from rule 2a–7, including the default liquidity fee provision for non-government money market funds with weekly liquid assets that fall below 10%.[78]

We do not agree that expanding the availability of rule 22e–3 is appropriate. Rule 22e–3 provides a mechanism for a money market fund to permanently suspend redemptions when the fund is under significant stress to facilitate an orderly liquidation. While the amendments in this release include the removal of a default liquidity fee provision for non-government money market funds linked to a 10% weekly liquid asset threshold, we do not agree

[67] *See* Proposing Release, *supra* note 6, at section II.A.2.

[68] *See* 17 CFR 270.22e–3. Rule 22e–3 under the Act permits money market funds to suspend redemptions and postpone the payment of proceeds in connection with a liquidation upon certain declines in liquidity or deviations between market-based and stable prices, board approval of liquidation, and notice to the Commission.

[69] *See, e.g.,* Western Asset Comment Letter; Morgan Stanley Comment Letter; Vanguard Comment Letter; CFA Comment Letter; SIFMA AMG Comment Letter; Comment Letter of the Committee on Capital Markets Regulation (Apr. 11, 2022) (''CCMR Comment Letter''); T. Rowe Comment Letter.

[70] *See* Allspring Funds Comment Letter; CFA Comment Letter; IIF Comment Letter; Northern Trust Comment Letter; SIFMA AMG Comment Letter.

[71] *See* Invesco Comment Letter.

[72] *See* Federated Hermes Comment Letter I; Comment Letter of Federated Hermes Funds Board of Trustees (Apr. 11, 2022) (''Federated Hermes Fund Board Comment Letter''); Comment Letter of the Cato Inst. (Feb. 10, 2022) (''Cato Inst. Comment Letter'').

[73] *See* Federated Hermes Comment Letter I (stating that funds should be required to report the basis for imposing temporary gates to the Commission); Federated Hermes Fund Board Comment Letter.

[74] *See* Cato Inst. Comment Letter.

[75] As proposed, in addition to removing the gate provisions from rule 2a–7, we are also removing associated disclosure and reporting requirements about a fund's potential or actual imposition of gates. *See* Items 4(b)(1)(ii) and 16(g) of current Form N–1A; Parts F and G of current Form N–CR.

[76] *See, e.g.,* Comment Letter of Mutual Fund Directors Forum (Apr. 11, 2022) (''Mutual Fund Directors Forum Comment Letter'').

[77] *See* Allspring Funds Comment Letter; Comment Letter of Dechert LLP (Apr. 11, 2022) (''Dechert Comment Letter'').

[78] *See* Dechert Comment Letter.

with the contention that the significance of the 10% weekly liquid asset threshold is thereby meaningfully reduced with respect to rule 22e–3. Due to the absolute and significant nature of a permanent suspension of redemptions and liquidation, the conditions in rule 22e–3, including the 10% weekly liquid asset threshold, limit the fund's ability to permanently suspend redemptions to circumstances that present a significant risk of a run on the fund and potential harm to shareholders.[79] We continue to believe that where a fund's weekly liquid assets fall below 10%, the fund is reasonably understood to be experiencing significant stress and circumstances may present a significant risk of a run on the fund and potential harm to shareholders. In these circumstances, the ability of the board of directors of such fund to suspend redemptions in light of a decision to liquidate can help address the significant run risk and reduce potential harm to shareholders. Where a money market fund is unable to avail itself of a permanent suspension of redemptions under rule 22e–3, the fund may suspend redemptions after obtaining an exemptive order from the Commission.[80] Accordingly, we are not adopting amendments to rule 22e–3.

B. Liquidity Fee Requirement

1. Determination To Adopt a Liquidity Fee Requirement

After considering comments, we are adopting a mandatory liquidity fee framework for institutional prime and institutional tax-exempt funds instead of the proposed swing pricing requirement. We believe the mandatory liquidity fee will reduce operational burdens associated with swing pricing while still achieving many of the benefits we were seeking with swing pricing by allocating liquidity costs to redeeming investors in stressed periods. In addition, we are adopting a discretionary liquidity fee for all non-government money market funds so that liquidity fees are an available tool for such funds to manage redemption pressures when the mandatory fee does not apply. Whether the fee is mandatory or discretionary, we are, as proposed, removing from rule 2a–7 the tie between liquidity fees and a fund's weekly liquid asset levels to avoid predictable triggers that may incentivize investors to preemptively redeem to avoid incurring fees.[81] This liquidity fee framework, independent of a predictable threshold for its application, achieves the intended benefits of the current liquidity fee regime by allocating liquidity costs to redeeming shareholders in times of stress while, in contrast to the current rule, avoiding incentives for preemptive redemptions associated with weekly liquid asset triggers. An approach solely based on liquidity fees, as opposed to gates, does not present the same concerns about incentivizing redemptions that exist under current rule 2a–7. As discussed, money market fund investors seemingly have been more concerned about the possibility of redemption gates than the possibility of liquidity fees.[82] This change is designed to increase the resilience of money market funds.

The Commission proposed a swing pricing requirement under which an institutional prime or institutional tax-exempt fund would downwardly adjust its current NAV per share by a swing factor when a fund has net redemptions. The swing factor adjustment would reflect spread and transaction costs and, if net redemptions exceeded 4% of the fund's net assets, then the swing factor would also include market impact costs. The Commission also proposed to remove the liquidity fee provision in rule 2a–7, which conditions the use of liquidity fees upon declines in fund liquidity below identified, predictable thresholds, and to specify that money market funds could instead impose liquidity fees under 17 CFR 270.22c–2 (''rule 22c–2'') at their discretion.[83]

Many commenters expressed broad concerns about the swing pricing proposal and its potential effect on institutional money market funds and investors. Several commenters stated that the proposed swing pricing requirement was incompatible with how money market funds operate and manage liquidity, which may limit the utility of these funds as cash management vehicles.[84] For instance, commenters expressed concern that swing pricing may inhibit a fund's ability to offer features such as same-day settlement and multiple NAV strikes per day due to concerns that swing pricing would delay a fund's ability to determine its NAV.[85] Some commenters suggested that swing pricing may assume a greater degree of liquidity costs than funds incur to meet redemptions because money market funds generally satisfy redemptions through maturing assets, rather than secondary market selling activity, and are equipped to handle relatively large redemptions with available liquidity.[86] Some commenters stated that swing pricing would introduce greater volatility in fund share prices and performance, which they asserted would reduce investor demand for institutional money market funds.[87] In addition, some commenters indicated that the operational costs of the proposed swing pricing requirement could cause some sponsors to eliminate their institutional prime and institutional tax-exempt money market funds, particularly smaller funds, and reduce money market fund assets.[88] In light of these considerations, some commenters suggested that swing pricing is not an appropriate tool for money market funds and stated that a

[79] *See* 2010 Adopting Release, *supra* note 26, at section II.H.

[80] 15 U.S.C. 80a–22(e).

[81] By ''predictable,'' we mean that an investor can use available information to predict whether a fee will apply on a given day or on future days. In the case of weekly liquid assets, an investor can observe the weekly liquid asset level disclosed for the prior day and use that information to predict whether the fund will cross the weekly liquid asset threshold in the near term. In the case of the net redemption threshold we are adopting for mandatory liquidity fees, while an investor can observe net flows for the prior day, that flow information does not necessarily predict the fund's flows for that day or future days, as net flows depend on independent investment decisions made by a large number of investors with differing needs and considerations. *See infra* section IV.C.4.a.i.

[82] *See supra* section II.A.1.

[83] *See* 17 CFR 270.22c–2 (rule 22c–2 under the Investment Company Act) (providing that an open-end fund may impose a redemption fee, not to exceed 2% of the value of the shares redeemed, upon the determination by the fund's board of directors that such fee is necessary or appropriate to recoup for the fund the costs it may incur as a result of those redemptions or to otherwise eliminate or reduce so far as practicable any dilution of the value of the outstanding securities issued by the fund).

[84] *See, e.g.,* Comment Letter of Independent Directors Council (Apr. 11, 2022) (''IDC Comment Letter''); Mutual Fund Directors Forum Comment Letter; Comment Letter of The Bank of New York Mellon (Apr. 11, 2022) (''BNY Mellon Comment Letter''); Fidelity Comment Letter; Comment Letter of State Street Global Advisors (Apr. 11, 2022) (''State Street Comment Letter''); Comment Letter of Federated Hermes, Inc. (Apr. 11, 2022) (''Federated Hermes Comment Letter II'') (letter primarily focused on the proposed swing pricing requirement).

[85] *See, e.g.,* Comment Letter of Capital Group Companies, Inc. (Apr. 11, 2022) (''Capital Group Comment Letter''); State Street Comment Letter; ICI Comment Letter; Federated Hermes Comment Letter II; SIFMA AMG Comment Letter; BNY Mellon Comment Letter.

[86] *See, e.g.,* SIFMA AMG Comment Letter; Comment Letter of American Bankers Association (Apr. 11, 2022) (''ABA Comment Letter I''); Invesco Comment Letter; Fidelity Comment Letter; Allspring Funds Comment Letter.

[87] *See* SIFMA AMG Comment Letter; Western Asset Comment Letter; *see also* Northern Trust Comment Letter; Federated Hermes Comment Letter II.

[88] *See, e.g.,* JP Morgan Comment Letter; BlackRock Comment Letter; IDC Comment Letter; Comment Letter of U.S. Chamber of Commerce, Center for Capital Markets Competitiveness (Apr. 11, 2022) (''US Chamber of Commerce Comment Letter''); CCMR Comment Letter; Comment Letter of Americans for Tax Reform (Apr. 9, 2022) (''Americans for Tax Reform Comment Letter''); Northern Trust Comment Letter.

liquidity fee framework would be better suited to the structure and characteristics of money market funds, if the Commission determines that an anti-dilution tool is necessary for these funds.[89]

Commenters expressed different views on whether the proposed swing pricing requirement would achieve the Commission's goal of ensuring that the costs stemming from net redemptions are fairly allocated and do not give rise to dilution or a potential first-mover advantage, particularly in times of stress. A few commenters were supportive of swing pricing and suggested that it would enhance the resilience of money market funds.[90] Many commenters, however, expressed concern that swing pricing would not achieve the Commission's goals of allocating liquidity costs and reducing dilution and potential first-mover advantages. Some commenters suggested that redemptions are not motivated by a first-mover advantage and that liquidity, rather than avoiding dilution from other shareholders' redemptions, was the motivation for redemptions in March 2020.[91] Some commenters suggested that swing pricing would not address first-mover issues because investors would not know at the time they submitted redemptions orders if a swing factor would apply for that pricing period.[92] Similarly, another commenter suggested that small adjustments to a fund's NAV would be unlikely to affect a shareholder's decision to redeem, even with a market impact factor.[93] Some other commenters suggested that uncertainty regarding the application of swing pricing may in fact increase incentives for investors to redeem ahead of others.[94]

As discussed in the Proposing Release, swing pricing and liquidity fees can be economically equivalent in terms of charging redeeming investors for the liquidity costs they impose on a fund.[95] Both approaches allow funds to recapture the liquidity costs of redemptions to make non-redeeming investors whole. The Commission considered both approaches in the Proposing Release and, after acknowledging that each approach has certain advantages and disadvantages over the other, the Commission expressed the view that swing pricing appeared to have operational benefits relative to liquidity fees. For example, as discussed in the proposal, the Commission believed swing pricing would require less involvement by intermediaries in applying a charge to redeeming investors than liquidity fees.[96]

Many commenters stated that liquidity fees were preferable to swing pricing.[97] Many of these commenters stated that liquidity fees would be easier for money market funds to implement. For instance, some commenters suggested that funds would be able to build on their existing experience with liquidity fees under current rules.[99] Similarly, some commenters raised the concern that swing pricing is ill-suited for money market funds given the general lack of experience with swing pricing in the money market fund industry.[100]

Several commenters stated that a liquidity fee framework would provide benefits to investors relative to swing pricing.[101] Some of these commenters suggested that a liquidity fee would be less confusing and more transparent with respect to the liquidity costs redeeming investors incur because investors are more familiar with the concept of liquidity fees (which exist in the current rule) and because the size of the swing factor is not readily observable in the fund's share price.[102] Some commenters suggested that a liquidity fee would be a more direct way to pass along liquidity costs and, unlike swing pricing, would do so without providing a discount to subscribing investors or adding volatility to the fund's NAV.[103] Some commenters suggested that the changes in a fund's

[89] *See, e.g.,* ICI Comment Letter (suggesting that, if data and analysis show that an anti-dilution mechanism is necessary for public institutional prime and tax-exempt funds, modifying and leveraging the existing fee framework would be less problematic than swing pricing and could serve the Commission's goals in a way that avoids imposing unnecessary operational costs); Invesco Comment Letter; SIFMA AMG Comment Letter (suggesting that, to the extent the Commission continues to believe, based on data driven findings and analysis, that an additional anti-dilution tool is necessary, the Commission consider liquidity fees instead of swing pricing); Federated Hermes Comment Letter I; Federated Hermes Comment Letter II; Invesco Comment Letter; Comment Letter of The Charles Schwab Corporation (Apr. 11, 2022) (''Schwab Comment Letter''); Morgan Stanley Comment Letter; JP Morgan Comment Letter; BlackRock Comment Letter; State Street Comment Letter; Western Asset Comment Letter; IIF Comment Letter; Allspring Funds Comment Letter. Some of the comments received with respect to the swing pricing proposal are also relevant to issues implicated by the liquidity fee mechanism that we are adopting. We primarily discuss those comments below in the relevant sections addressing the amended liquidity fee framework.

[90] *See, e.g.,* Americans for Financial Reform Comment Letter; CFA Comment Letter; Comment Letter of Systemic Risk Council (Apr. 15, 2022) (''Systemic Risk Council Comment Letter''); Better Markets Comment Letter; Comment Letter of Chris Barnard (Oct. 19, 2022) (''Chris Barnard Comment Letter'').

[91] *See, e.g.,* Fidelity Comment Letter; Capital Group Comment Letter; BlackRock Comment Letter; Americans for Tax Reform Comment Letter; *see also* Federated Hermes Comment Letter I (suggesting that the 2014 amendments that imposed a floating NAV on institutional funds sufficiently addressed first-mover issues).

[92] *See, e.g.,* Capital Group Comment Letter; Dechert Comment Letter; Schwab Comment Letter; Allspring Funds Comment Letter; Federated Hermes Comment Letter II; JP Morgan Comment Letter; BlackRock Comment Letter; ICI Comment Letter; SIFMA AMG Comment Letter; *see also* US Chamber of Commerce Comment Letter.

[93] *See* Fidelity Comment Letter.

[94] *See, e.g.,* CCMR Comment Letter (suggesting that swing pricing could incentivize runs as investors seek to redeem before a market impact factor is applied); Comment Letter of Institutional Cash Distributors (Apr. 11, 2022) (''ICD Comment Letter''); Prof. Hanson *et al.* Comment Letter; State Street Comment Letter.

[95] *See* Proposing Release, *supra* note 6, at sections II.B.1 and III.D.5.

[96] *See id.* at paragraph accompanying n.149 and section III.D.5.

[97] *See, e.g.,* Invesco Comment Letter; SIFMA AMG Comment Letter (stating that liquidity fees offer many advantages as compared to swing pricing); Federated Hermes Comment Letter I (suggesting that a discretionary liquidity fee would be less onerous than swing pricing); Federated Hermes Commenter Letter II; Invesco Comment Letter; Schwab Comment Letter; Morgan Stanley Comment Letter; JP Morgan Comment Letter; BlackRock Comment Letter; State Street Comment Letter; Western Asset Comment Letter; IIF Comment Letter; Allspring Funds Comment Letter; *see also* Dechert Comment Letter; CFA Comment Letter.

[98] *See, e.g.,* Federated Hermes Comment Letter II; Invesco Comment Letter; SIFMA AMG Comment Letter; Schwab Comment Letter; IIF Comment Letter; BlackRock Comment Letter.

[99] *See, e.g.,* Federated Hermes Comment Letter II; Invesco Comment Letter; SIFMA AMG Comment Letter; Schwab Comment Letter; IIF Comment Letter.

[100] *See* Morgan Stanley Comment Letter; SIFMA AMG Comment Letter; IIF Comment Letter; Federated Hermes Comment Letter I; Federated Hermes Comment Letter II; Comment Letter of Senator Pat Toomey (Apr. 12, 2022) (''Senator Toomey Comment Letter''); Mutual Fund Directors Forum Comment Letter; *see also* Comment Letter of Professor Stephen G. Cecchetti, Brandeis International Business School, and Professor Kermit L. Schoenholtz, Leonard N. Stern School of Business, New York University (Feb. 1, 2022) (''Profs. Ceccheti and Schoenholtz Comment Letter'').

[101] *See, e.g.,* ICI Comment Letter; Invesco Comment Letter; SIFMA AMG Comment Letter; Federated Hermes Comment Letter I; Federated Hermes Commenter Letter II; Invesco Comment Letter; Schwab Comment Letter; Morgan Stanley Comment Letter; JP Morgan Comment Letter; BlackRock Comment Letter; State Street Comment Letter; Western Asset Comment Letter; IIF Comment Letter; Allspring Funds Comment Letter; *see also* Dechert Comment Letter; CFA Comment Letter.

[102] *See, e.g.,* Morgan Stanley Comment Letter (expressing the belief that investors understand and are more comfortable with a fee-based regime, as compared to swing pricing, because of previous efforts of money market fund sponsors to educate fund investors on liquidity fees, as well as investors' experiences with redemption fees under rule 22c–2 and sales charges and deferred sales charges); SIFMA AMG Comment Letter; Federated Hermes Comment Letter II.

[103] *See, e.g.,* ICI Comment Letter; Federated Hermes Comment Letter II (''Shareholders who subscribe on days when price is swung down will receive a windfall profit.''); JP Morgan Comment Letter (''[R]emaining investors will not experience additional NAV volatility as with swing pricing.'').

NAV caused by application of the swing factor may cause investors to time their purchases of money market shares to attain a pricing advantage during predictable seasonal redemption activity such as tax payment dates or month-end.[104] Further, one commenter indicated that a liquidity fee framework could better preserve same-day liquidity for investors than swing pricing because liquidity fees are already operationally feasible for many money market funds and present fewer implementation challenges.[105]

Commenters suggested various alternatives regarding the form and structure of liquidity fees. Some commenters suggested that fund boards should have discretion to determine whether to impose liquidity fees.[106] Some commenters suggested an approach where liquidity fees would apply automatically upon certain events, such as upon net redemptions exceeding an identified threshold or liquidity dropping below a certain level.[107]

After considering these comments, we are adopting a liquidity fee framework to better allocate liquidity costs to redeeming investors. The proposed swing pricing requirement was designed to address potential shareholder dilution and the potential for a first-mover advantage for institutional funds. While we continue to believe these goals are important, we are persuaded by commenters that these same goals are better achieved through a liquidity fee mechanism, particularly given that current rule 2a–7 includes a liquidity fee framework that funds are accustomed to and can build upon.

The mandatory liquidity fee framework we are adopting is designed to address concerns with the prior liquidity fee framework—namely the incentives for preemptive redemptions associated with predictable weekly liquid asset triggers. At the same time it continues to seek to ensure that the costs stemming from redemptions in stressed market conditions are more fairly allocated to redeeming investors. Specifically, institutional prime and institutional tax-exempt money market funds will be subject to a mandatory liquidity fee when net redemptions exceed 5% of net assets.[108] Funds will not be required to impose this fee, however, when liquidity costs are less than one basis point, which we anticipate will often be the case under normal market conditions.[109] As discussed in more detail throughout this section, the mandatory liquidity fee we are adopting will broadly address the concerns commenters raised about the swing pricing proposal while still generally achieving the goals we sought in that proposal. Separately, similar to the statements in the proposal that money market funds can impose discretionary liquidity fees under rule 22c–2, amended rule 2a–7 will provide a discretionary liquidity fee tool to all non-government money market funds, which a fund will use if its board (or the board's delegate, in accordance with board-approved guidelines) determines that such fee is in the best interests of the fund.[110]

The mandatory liquidity fee approach that we are adopting will require redeeming investors to pay the cost of depleting a fund's liquidity, particularly under stressed market conditions and when net redemptions are sizeable. As discussed in the proposal, trading activity and other changes in portfolio holdings associated with meeting redemptions may impose costs, including trading costs and costs of depleting a fund's daily or weekly liquid assets. These costs, which currently are borne by the remaining investors in the fund, can dilute the interests of non-redeeming shareholders and create incentives for shareholders to redeem quickly to avoid losses, particularly in times of market stress.[111] If shareholder redemptions are motivated by this first-mover advantage, they can lead to increasing outflows, and as the level of outflows from a fund increases, the incentive for remaining shareholders to redeem may also increase. Regardless of the motive for investor redemptions, there can be significant, unfair adverse consequences to remaining investors in a fund in these circumstances, including material dilution of remaining investors' interests in the fund. The mandatory liquidity fee mechanism is designed to reduce the potential for such dilution.

Some commenters suggested that an anti-dilution tool is not necessary for money market funds. Several of these commenters suggested that money market funds do not experience dilution as a general matter because they are able to address their liquidity needs without cost and without selling assets by using daily liquid assets and weekly liquid assets, which are held to maturity.[112] Some commenters further suggested that the Commission did not provide sufficient data analysis to support its view that money market funds are subject to dilution.[113] Some commenters suggested an anti-dilution tool was unnecessary in light of either the proposed increased daily and weekly liquid asset requirements, the proposed removal of the tie to weekly liquid assets, or a combination of those factors because funds would have additional liquidity to meet redemptions and would be better able to use that liquidity in future stress periods.[114]

After considering comments, we continue to believe that in periods of market stress, when liquidity in underlying short-term funding markets is scarce and costly, redeeming investors should bear liquidity costs associated with sizeable redemption activity. While we recognize that a fund may not incur immediate costs to meet those redemptions if the fund can satisfy redemptions using daily liquid assets, the fund is likely to face costs to rebalance the liquidity of its portfolio

[104] *See* Federated Hermes Comment Letter I; Federated Hermes Comment Letter II (expressing concern about other scenarios in which swing pricing may incentivize trading to take advantage of fluctuations in the fund's NAV, such as incentives to purchase in early pricing periods—when money market funds tend to have more redemptions—and redeem in a later pricing period, when net redemptions are less likely); Western Asset Comment Letter; Dechert Comment Letter (suggesting that swing pricing may have a potentially unintended dilutive effect of incentivizing investors to buy into a fund at a lower NAV once the fund swings).

[105] *See* IIF Comment Letter.

[106] *See, e.g.,* ICI Comment Letter; Schwab Comment Letter; Federated Hermes Comment Letter I; Federated Hermes Comment Letter II; Federated Hermes Fund Board Comment Letter; Invesco Comment Letter; SIFMA AMG Comment Letter.

[107] *See, e.g.,* Morgan Stanley Comment Letter; Western Asset Comment Letter; BlackRock Comment Letter; State Street Comment Letter; SIFMA AMG Comment Letter; ICI Comment Letter; JP Morgan Comment Letter; IIF Comment Letter; Invesco Comment Letter.

[108] *See* amended rule 2a–7(c)(2)(ii).

[109] *See* amended rule 2a–7(c)(2)(iii)(D).

[110] A government money market fund may elect to be subject to the discretionary liquidity fee requirement.

[111] *See infra* section IV.B.1.c.

[112] *See, e.g.,* Northern Trust Comment Letter; Fidelity Comment Letter; SIFMA AMG Comment Letter; IIF Comment Letter; Federated Hermes Comment Letter II; CCMR Comment Letter; State Street Comment Letter; ICI Comment Letter; JP Morgan Comment Letter; Comment Letter of Stephen A. Keen (Apr. 11, 2022) (''Keen Comment Letter''); Comment Letter of U.S. Bancorp Asset Management (Apr. 14, 2022) (''Bancorp Comment Letter'').

[113] *See, e.g.,* Morgan Stanley Comment Letter; Fidelity Comment Letter (suggesting that the SEC lacked data to demonstrate the significance or materiality of shareholder dilution); ICI Comment Letter; SIFMA AMG Comment Letter; CCMR Comment Letter.

[114] *See, e.g.,* Schwab Comment Letter; Healthy Markets Association Comment Letter; Allspring Funds Comment Letter; Fidelity Comment Letter; Invesco Comment Letter; BlackRock Comment Letter; Federated Hermes Comment Letter II; ICI Comment Letter; SIFMA AMG Comment Letter; *but see* Better Markets Comment Letter (suggesting that increasing the costs of redemptions would reduce potential first-mover advantages).

over time.[115] Moreover, if redemptions are large and ongoing, there is an increased likelihood that the fund will need to sell less liquid assets to satisfy redemptions, which involves greater costs. Thus, there is a timing misalignment between an investor's redemption activity and when the fund, and its remaining shareholders, incur liquidity costs. The liquidity fee requirement we are adopting is designed to protect remaining shareholders from dilution under these circumstances and to more fairly allocate costs so that redeeming shareholders bear the costs of removing liquidity from the fund when liquidity in underlying short-term funding markets is costly.

In response to comments suggesting that we conduct a data analysis on the extent to which money market fund shareholders have experienced dilution in the past, we do not have fund-specific data on dilution because funds do not report information about their daily portfolio holdings and transactions. However, as discussed in the Proposing Release, in March 2020 institutional prime and institutional tax-exempt money market funds experienced significant outflows, spreads for instruments in which these funds invest widened sharply, and these funds sold significantly more long-term portfolio securities (*i.e.,* securities that mature in more than a month) than average.[116] For instance, Form N–MFP data suggests that publicly offered institutional prime funds increased their sales of long-term securities in March 2020 to 15% of total assets, in comparison to a 4% monthly average between October 2016 and February 2020. In addition, the March 2020 figure, which is over three times the monthly average as compared to data from prior years, likely understates the full extent of the selling activity, as Form N–MFP currently does not provide insight on sales of portfolio securities that a fund acquired during the relevant month.[117] As an example of widening spreads in the markets in which prime funds invest, bid-ask spreads of highly rated dealer-placed commercial paper reached between approximately 25 and 55 basis points at the height of the stress in March and April 2020 depending on maturity.[118] Thus, available evidence indicates that money market funds were incurring liquidity costs to meet redemptions, but these costs generally were not borne by redeeming investors who received the NAV at the time of their redemptions.[119] Moreover, the dilution the final rule is designed to address is not limited to the costs a fund incurs in selling portfolio securities to meet redemptions. The final rule also addresses dilution from the costs of reducing the liquidity of a fund's portfolio, including associated rebalancing costs, which would also require granular daily data that funds do not publicly report.

We understand that future stress periods may not look exactly the same as March 2020, and, as some commenters suggested, in future periods funds may feel more comfortable drawing on available liquidity to meet redemptions because we are removing the tie between liquidity thresholds and fees and gates. Funds also may begin future stressed periods with higher levels of daily and weekly liquid assets than in March 2020, although at that time some funds had liquidity above the minimums we are adopting. However, it is also possible that future stress periods will be longer or otherwise more severe than March 2020, that future stress events will have no Federal intervention to alleviate those stresses, or that a particular fund or group of funds will come under stress due to factors idiosyncratic to the fund(s). It is important for funds to be able to manage through various types of stress events and not to rely solely on liquidity buffers to manage stress. As discussed below and in the Proposing Release, while liquidity minimums are an important tool for managing redemptions, our analysis suggests that some funds would run out of liquidity if faced with the redemptions rates experienced in March 2020.[120] Thus, we do not agree with commenters who suggested that amendments to enhance money market fund liquidity, and the usability of that liquidity, would be sufficient on their own, without an available anti-dilution tool.

Moreover, to the extent that investors currently are incentivized to redeem quickly during periods of market stress to avoid potential costs from a fund's future sale of less liquid securities, the amendments will reduce those first-mover incentives and the associated run risk. While some academic papers support the premise that liquidity externalities may create a first-mover advantage that may lead to cascading anticipatory redemptions, we recognize that investors may redeem from a fund for a variety of reasons, and these reasons may vary among investors.[121] Notably, we are concerned about dilution and fair allocation of costs when a fund has sizeable net redemptions in a stressed period regardless of the reasons for investors' redemptions. In response to comments suggesting that an anti-dilution tool would not address first-mover issues if an investor does not know if it will incur liquidity costs at the time the investor submits the redemption order, we disagree. We believe that an investor's general awareness that it may incur liquidity costs, particularly in stressed market conditions and when other investors may also be redeeming, is sufficient to mitigate the first-mover advantage and reduce its potential influence on an investor's redemption decisions. We also disagree with commenters who suggested that an anti-dilution tool with a net redemption trigger may increase incentives for investors to redeem ahead of others. Investors generally will not know with certainty if the fund's flows for any particular day will trigger a liquidity fee since a fund's net flows are dependent on many investors' individual investment decisions, which are not knowable in advance and can be influenced by a multitude of different factors.[122] While investors may anticipate that a fund will have net redemptions during a market stress event, the investors will also know that if they redeem, the likelihood of incurring fees increases. This dynamic should reduce investors' incentives to attempt to preemptively redeem to avoid liquidity fees. We agree with commenters that suggested that a net redemption threshold would be appropriate to avoid the threshold effects seen in March 2020.[123]

[115] Theoretically, a money market fund would not incur rebalancing costs if it were able to perfectly ''ladder'' the maturity of its portfolio structure, such that investments are maturing in parallel with investors' redemption activities. However, as a practical matter, perfect laddering is impossible because funds do not have advance notice of all investor purchase and redemption activity.

[116] *See* Proposing Release, *supra* note 6, at section I.B.

[117] As discussed below, we are amending Form N–MFP to require prime funds to report the value of non-maturing portfolio securities they sold each month. *See infra* section II.F.2.a.

[118] *See infra* paragraph accompanying note 630.

[119] To the extent that ultra-short bonds may be somewhat comparable to the debt instruments that money market funds hold and the magnitude of NAV discounts that ultra-short bond exchange-traded funds experienced in March 2020 may proxy for liquidity costs of money market funds that hold similar assets, this could suggest that institutional prime money market funds have nontrivial dilution costs during market stress. *See id.*

[120] *See infra* sections II.C.1 and IV.C.2; Proposing Release, *supra* note 6, at sections II.C.1 and III.C.2.

[121] *See infra* note 550 and accompanying text (discussing these academic papers).

[122] *See infra* section IV.C.4.b.i (further discussing how a liquidity fee based on a net redemptions trigger may mitigate run incentives).

[123] *See, e.g.,* SIFMA AMG Comment Letter; BlackRock Comment Letter: IIF Comment Letter;

Moreover, the 5% net redemption threshold is designed to help mitigate the risk that a significant amount of redemptions could occur under stressed market conditions before a fee is triggered, thus incentivizing investors to redeem ahead of others.

As the Commission has previously recognized, in the absence of an exemption, imposing liquidity fees could violate 17 CFR 270.22c–1 (''rule 22c–1''), which (together with section 22(c) and other provisions of the Investment Company Act) requires that each redeeming shareholder receive his or her pro rata portion of the fund's net assets.[124] As a result, we are exercising our authority under section 6(c) of the Act to provide exemptions from these and related provisions of the Act so that a money market fund can institute liquidity fees, which can benefit the fund and its shareholders by providing a more systematic and equitable allocation of liquidity costs, notwithstanding these restrictions.[125] We believe that such exemptions do not implicate the concerns that Congress intended to address in enacting these provisions, and thus they are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the Act.

As discussed, we are adopting a mandatory liquidity fee framework in lieu of the proposed swing pricing requirement. Table 1 below compares the key elements of the current rule's default liquidity fee, the proposed swing pricing requirement, and the mandatory liquidity fee provision we are adopting. In addition, Table 2 below compares the key elements of the current rule's discretionary liquidity fee, the redemption fee approach contemplated by the proposal, and the discretionary liquidity fee provision we are adopting. We discuss these aspects of the final rule and how they relate to comments on the proposal in the following sections.

TABLE 1—COMPARISON OF THE CURRENT RULE'S DEFAULT LIQUIDITY FEE, THE PROPOSED RULE'S SWING PRICING REQUIREMENT, AND THE FINAL RULE'S MANDATORY LIQUIDITY FEE

	Current rule's default liquidity fee	Proposed rule's swing pricing requirement	Final rule's mandatory liquidity fee
Description of mechanism.	A default fee is charged to redeeming investors when the fund's weekly liquid assets decline below 10%, subject to certain board discretion.	The fund's NAV is adjusted downward by a swing factor when the fund has net redemptions.	A mandatory fee is charged to redeeming investors when the fund has net redemptions above 5% of net assets.
Scope of affected funds.	Prime and tax-exempt money market funds ..	Institutional prime and institutional tax-exempt money market funds.	Institutional prime and institutional tax-exempt money market funds.
Scope of affected investors.	Redeeming investors are charged a liquidity fee. The liquidity fee does not affect subscribing investors.	The NAV is adjusted downward for both redeemers and subscribers. Redeeming investors' redemption proceeds are reduced and subscribing investors purchase at a discounted price, compared to the unadjusted NAV they both otherwise would have received.	Redeeming investors are charged a liquidity fee. The liquidity fee does not affect subscribing investors.
Threshold for applying a charge.	If weekly liquid assets fall below 10%, then a default fee would apply to redeeming investors, unless the board determines a fee is not in the best interests of the fund.[1]	At any level of net redemptions for a pricing period, the swing factor includes spreads and certain other transaction costs (*i.e.,* brokerage commissions, custody fees, and any other charges, fees, and taxes associated with portfolio security sales). If net redemptions for a pricing period exceed 4% of net assets divided by the number of pricing periods per day, or such smaller amount of net redemptions as the swing pricing administrator determines, the swing factor also includes market impact costs.	Fees are triggered when the fund has total daily net redemptions that exceed 5% of net assets based on flow information available within a reasonable period after the last computation of the fund's net asset value on that day, or such smaller amount of net redemptions as the board determines.
Duration and application of the charge.	The liquidity fee begins to apply on the business day after the fund crosses the 10% weekly liquid asset threshold. Once imposed, the fee must be applied to all shares redeemed and remains in effect until the fund's board, including a majority of directors who are not interested persons of the fund, determines that imposing a fee is not in the best interests of the fund. If the fund has invested 30% or more of its total assets in weekly liquid assets as of the end of a business day, the fund must cease charging a fee effective the beginning of the next business day.	The price is adjusted for all shareholders transacting in the fund's shares during the relevant pricing period.	The fund must apply a liquidity fee to all shares that are redeemed at a price computed on the day the fund has total daily net redemptions that exceed 5% of net assets.

Morgan Stanley Comment Letter. As discussed further below, some of these commenters suggested a trigger for liquidity fees that paired a net redemption threshold with a weekly liquid asset threshold.

[124] *See* 2014 Adopting Release, *supra* note 26, at section III.A.3.

[125] Section 6(c) of the Investment Company Act. In addition, like current rule 2a–7, the final rule provides that, notwithstanding section 27(i) of the Investment Company Act, a variable insurance contract issued by a registered separate account funding variable insurance contracts or the sponsoring insurance company of such separate account may apply a liquidity fee to contract owners who allocate all or a portion of their contract value to a subaccount of the separate account that is either a money market fund or that invests all of its assets in shares of a money market fund. *See* 17 CFR 270.2a–7(c)(2)(iv); amended rule 2a–7(c)(2)(iv). Section 27(i)(2)(A) makes it unlawful for any registered separate account funding variable insurance contracts or the sponsoring insurance company of such account to sell a variable contract that is not a ''redeemable security.''

TABLE 1—COMPARISON OF THE CURRENT RULE'S DEFAULT LIQUIDITY FEE, THE PROPOSED RULE'S SWING PRICING REQUIREMENT, AND THE FINAL RULE'S MANDATORY LIQUIDITY FEE—Continued

	Current rule's default liquidity fee	Proposed rule's swing pricing requirement	Final rule's mandatory liquidity fee
Size of the charge	The default fee is 1%, unless the fund's board of directors, including a majority of the directors who are not interested persons of the fund, determines that a higher or lower fee level is in the best interests of the fund.	The swing factor would be determined by making good faith estimates of the spread, other transaction, and market impact costs the fund would incur, as applicable, if it were to sell a pro rata amount of each security in its portfolio to satisfy the amount of net redemptions. Affected money market funds could estimate costs and market impact factors for each type of security with the same or substantially similar characteristics and apply those estimates to all securities of that type in the fund's portfolio, rather than analyze each security separately.	The size of the fee generally is determined by making a good faith estimate of the spread, other transaction, and market impact costs the fund would incur if it were to sell a pro rata amount of each security in its portfolio to satisfy the amount of net redemptions. Affected money market funds can estimate costs and market impacts for each type of security with the same or substantially similar characteristics and apply those estimates to all securities of that type in the fund's portfolio, rather than analyze each security separately. If the estimated liquidity costs are less than one basis point (0.01%) of the value of the shares redeemed, a fund is not required to apply a fee under the *de minimis* exception. If the fund cannot estimate the costs of selling a pro rata amount of each portfolio security in good faith and supported by data, a default liquidity fee of 1% of the value of shares redeemed applies.
Maximum charge	The fee cannot exceed 2% of the value of the shares redeemed.	The swing factor has no upper limit	The fee has no upper limit.
Party who administers the provision.	The board is responsible for administering the liquidity fee requirement. The board may not delegate liquidity fee determinations.	The board must approve swing pricing policies and procedures. The swing pricing administrator is charged with administering the swing pricing requirement. The swing pricing administrator is the fund's investment adviser, officer, or officers responsible for administering the fund's swing pricing policies and procedures, as designated by the fund's board. The administrator can be an individual or a group of persons.	The board is responsible for administering the liquidity fee requirement, but the board can delegate this responsibility to the fund's investment adviser or officers, subject to written guidelines established and reviewed by the board and ongoing board oversight.[2]

Notes:
[1] The board determinations this Table refers to generally must include a majority of the directors who are not interested persons of the fund.
[2] This approach is consistent with the operation of several other provisions of rule 2a–7.

TABLE 2—COMPARISON OF THE CURRENT RULE'S DISCRETIONARY LIQUIDITY FEE, THE PROPOSED RULE, AND THE FINAL RULE'S DISCRETIONARY LIQUIDITY FEE

	Current rule's discretionary liquidity fee	Proposed rule and rule 22c–2	Final rule's discretionary liquidity fee
Description of mechanism.	A discretionary fee may be charged to redeeming investors when the fund's weekly liquid assets decline below 30% and the board determines that a fee is in the best interests of the fund.[1]	The proposal would have removed the discretionary liquidity fee provision in rule 2a–7 and stated that money market fund boards could rely on existing rule 22c–2 if they determine redemption fees are needed to address dilution.	Irrespective of liquidity or redemption levels, a discretionary fee is charged to redeeming investors when the board determines that the fee is in the best interests of the fund.
Scope of affected funds.	Prime and tax-exempt money market funds. Government money market funds may opt in.	Any money market fund may elect to rely on rule 22c–2 to impose fees, in which case the fund would no longer be an excepted fund under that rule.	Prime and tax-exempt money market funds. Government money market funds may opt in.
Scope of affected investors.	Redeeming investors are charged a liquidity fee. The liquidity fee does not affect subscribing investors.	Redeeming investors are charged a liquidity fee. The liquidity fee does not affect subscribing investors.	Redeeming investors are charged a liquidity fee. The liquidity fee does not affect subscribing investors.
Threshold for applying a charge.	If weekly liquid assets fall below 30%, then a fund may institute a fee if the board determines that the fee is in the best interests of the fund.	The fund's board may impose a redemption fee that in its judgment is necessary or appropriate to recoup for the fund the costs it may incur as a result of redemptions or to otherwise eliminate or reduce so far as practicable any dilution of the value of the outstanding securities issued by the fund.	If the board determines that doing so is in the best interests of the fund, the board must impose a liquidity fee.
Duration and application of the charge.	Once imposed, the discretionary fee must be applied to all shares redeemed and remain in effect until the fund's board determines that imposing a fee is not in the best interests of the fund. If the fund has invested 30% or more of its total assets in weekly liquid assets as of the end of a business day, the fund must cease charging a fee effective the beginning of the next business day.	Generally subject to board discretion under the rule.	Once imposed, the discretionary fee must be applied to all shares redeemed and remain in effect until the fund's board determines that imposing such fee is no longer in the best interests of the fund.

TABLE 2—COMPARISON OF THE CURRENT RULE'S DISCRETIONARY LIQUIDITY FEE, THE PROPOSED RULE, AND THE FINAL RULE'S DISCRETIONARY LIQUIDITY FEE—Continued

	Current rule's discretionary liquidity fee	Proposed rule and rule 22c–2	Final rule's discretionary liquidity fee
Size of the charge	The rule does not prescribe the manner or amount of the fee calculation. The fee, however, must be in the best interests of the fund.	The fee must be necessary or appropriate, as determined by the board, to recoup for the fund the costs it may incur as a result of those redemptions or to otherwise eliminate or reduce so far as practicable any dilution of the value of the outstanding securities issued by the fund.	The rule does not prescribe the manner or amount of the fee calculation. The fee, however, must be in the best interests of the fund.
Maximum charge	The fee cannot exceed 2% of the value of the shares redeemed.	The fee cannot exceed 2% of the value of the shares redeemed.	The fee cannot exceed 2% of the value of the shares redeemed.
Party who administers the provision.	The board is responsible for administering the liquidity fee requirement. The board may not delegate liquidity fee determinations.	The fund's board	The board is responsible for administering the liquidity fee requirement, but the board can delegate this responsibility to the fund's investment adviser or officers, subject to written guidelines established and reviewed by the board and ongoing board oversight.[2]

Notes:
[1] The board determinations this Table refers to generally must include a majority of the directors who are not interested persons of the fund.
[2] This approach is consistent with the operation of several other provisions of rule 2a–7.

2. Terms of the New Mandatory Liquidity Fee Requirement

The mandatory liquidity fee we are adopting, like the swing pricing proposal, is based upon a net redemption threshold and only applies to institutional prime and institutional tax-exempt funds.[126] Unlike the swing pricing proposal, however, the anti-dilution measure triggers only when net redemptions for the business day exceed 5% of net assets.[127] Similar to the proposed swing pricing proposal, the fee amount would reflect the fund's good faith estimate of liquidity costs, supported by data, of the costs the fund would incur if it sold a pro rata amount of each security in its portfolio (*i.e.,* vertical slice) to satisfy the amount of net redemptions, including: (1) spread costs and any other charges, fees, and taxes associated with portfolio security sales; and (2) market impacts for each security.[128] The final rule will not require a fund to apply a fee if the estimated costs are *de minimis,* meaning that if the fee were applied, the amount of the fee would be less than 0.01% of the value of the shares redeemed.[129] In addition, if a fund cannot make a good faith estimate of liquidity costs, it will apply a default fee of 1%.[130] This mandatory liquidity fee regime substantially accomplishes the same goals as the proposed swing pricing mechanism and, like swing pricing, it is designed to ensure that the costs stemming from significant net redemptions in periods of market stress are fairly allocated and will not give rise to dilution or a first-mover advantage.

The new mandatory liquidity fee has some key differences as compared to the current rule. For example, the mandatory liquidity fee is triggered by net redemptions as opposed to weekly liquid assets.[131] In addition, unlike the current rule, but consistent with the proposed swing pricing requirement, the amended framework does not provide discretion to the board with respect to its application. Rather, the fund will be required to apply a fee if it crosses the net redemption threshold unless the fee amount is *de minimis.* Moreover, the final amendments are more specific in terms of how a fund determines the amount of the fee than the current rule and, as a result, does not include a limit on the amount of the fee a fund can charge.[132]

The new mandatory liquidity fee only applies to institutional prime and institutional tax-exempt funds. This is in contrast to the current rule's default liquidity fees, which apply to retail funds, but is consistent with the approach we proposed for swing pricing. We are not requiring retail or government money market funds to implement mandatory liquidity fees due to differences in investor behavior and, in the case of government funds, liquidity costs. As discussed in the proposal, retail money market funds historically have had smaller outflows than institutional funds during times of market stress and appear to be less sensitive to declines in a fund's liquidity.[133] As a consequence, we continue to believe retail fund managers may be more comfortable drawing down available liquidity from the fund's daily liquid assets and weekly liquid assets to meet redemptions in times of stress, without engaging in secondary market sales that could result in significant liquidity costs. In addition, we do not believe that retail prime and tax-exempt money market funds need special provisions requiring them to impose liquidity fees given both the anticipated effect of the daily and weekly liquid asset requirement changes and, as described below, the availability of the discretionary liquidity fee we are adopting. As for government money market funds, investors typically view these funds, in contrast to prime money market funds, as a relatively safe investment during times of market turmoil, and government money market funds have seen inflows during periods of market instability. Government money market funds are also less likely to incur significant liquidity costs when they purchase or sell portfolio securities

[126] We refer to money market funds that are not government money market funds or retail money market funds collectively as ''institutional funds'' when discussing the liquidity fee requirement.

[127] *See* amended rule 2a–7(c)(2)(ii) (allowing a fund's board to determine to use a smaller net redemption threshold than 5%). In contrast, the proposed swing pricing requirement would have required an institutional fund to adjust its current NAV per share by a swing factor reflecting spread and transaction costs, as applicable, if the fund has net redemptions for the pricing period. If the institutional fund experienced net redemptions exceeding 4% of the fund's net asset value (divided by the number of pricing periods the fund has in a business day, or such smaller amount of net redemptions as the swing pricing administrator determines), then the swing factor would also include market impact costs.

[128] *See* amended rule 2a–7(c)(2)(iii)(A).

[129] *See* amended rule 2a–7(c)(2)(iii)(D).

[130] *See* amended rule 2a–7(c)(2)(iii)(C).

[131] *See* 17 CFR 270.2a–7(c)(2)(ii) (requiring a non-government money market fund to impose a default liquidity fee of 1% on all redemptions if its weekly liquid assets fall below 10% of its total assets, unless the board of directors of the fund (including a majority of its independent directors) determines that imposing such a fee would not be in the best interests of the fund).

[132] In contrast, under the current rule, a liquidity fee may not exceed 2% of the value of the shares redeemed. *See* 17 CFR 270.2a–7(c)(2)(ii)(A).

[133] *See* Proposing Release, *supra* note 6, at section II.B.1.

due to the generally higher levels of liquidity in the markets in which they invest.

Consistent with the swing pricing proposal, the mandatory anti-dilution mechanism (in this case a liquidity fee) applies to all institutional funds, irrespective of whether they are offered publicly. Some commenters suggested that privately offered institutional funds should not be subject to a mandatory anti-dilution tool.[134] Asset managers typically organize privately offered institutional money market funds to manage cash balances of other affiliated funds and accounts. These funds operate in almost all respects as a registered money market fund, except that their securities are privately offered and thus not registered under the Securities Act.[135] Some commenters suggested privately offered institutional funds are not subject to the same first-mover and run concerns as publicly offered institutional funds because they serve as tools for funds within the same fund complex and are used for internal purposes such as cash management and investing collateral from securities lending transactions.[136] For example, one commenter suggested that, because of these characteristics, such funds are focused more on liquidity than yield.[137] Other commenters suggested that such funds have greater transparency into redemptions than publicly offered institutional funds.[138] We decline to provide an exception for these funds from the mandatory liquidity fee requirement because we do not believe that such funds are immune to the risks of dilution and potential first-mover advantages that mandatory liquidity fees are designed to address. For example, registered funds investing in a privately offered institutional fund may have an incentive to redeem shares in times of market stress (*e.g.,* to raise funds to pay their own redemptions, which may be heightened at that time), increasing the risk of dilution for remaining registered funds. Potential first-mover incentives may also exist, particularly if registered funds are investing in a privately offered institutional fund in another fund complex in which the registered funds have no greater transparency, creating a potential incentive to redeem ahead of other investors in times of market stress.[139]

The final rule provides for mandatory liquidity fees for institutional funds because institutional investors have a history of redeeming from these funds quickly in times of stress, increasing the risk of dilution for remaining shareholders in institutional funds. In addition, if the liquidity fee regime for these funds were purely voluntary, institutional funds (or their boards) may require additional time or information to decide whether to impose fees, depending on the considerations on which the fee is based. This could result in a delay that creates timing misalignments between an investor's redemption activity and the imposition of liquidity costs, thus allowing some investors to redeem without bearing the associated liquidity costs and contributing to dilution and a first-mover advantage. Further, some funds (or their boards) may be reluctant to impose fees to avoid perceived reputational or competitiveness issues associated with imposing fees before other institutional funds, which institutional investors may be more likely to react to than retail investors.[140] As a result, a purely voluntary regime may result in institutional funds not imposing a fee unless a fund is under severe and prolonged stress, by which point the fee's effectiveness in addressing dilution and potential first-mover advantages would be significantly reduced.[141]

a. Threshold for Mandatory Liquidity Fees

We are requiring that institutional funds apply the mandatory liquidity fee when net redemptions for the business day exceed 5% of net assets, or such smaller amount of net redemptions as the board (or its delegate) determines. This 5% threshold is in contrast to the swing pricing proposal, which would have required funds to charge redeeming investors spread and certain other transaction costs if the fund had any net redemptions for the pricing period and to include market impacts in the charge if net redemptions exceeded 4% of net assets, or such smaller amount of net redemptions as the swing pricing administrator determines. In the proposal, application of this 4% threshold would have required funds to divide the 4% value by the number of pricing periods (*i.e.,* NAV strikes) the fund has each day.[142] In contrast, the 5% net redemption threshold is based on flows for all pricing periods in a given day. In addition, unlike the current rule, but consistent with the proposal, application of the anti-dilution mechanism is not tied to a weekly liquid asset threshold. Also, unlike the current rule, but consistent with the proposal, the mechanism applies to redemptions on each business day a fund crosses the net redemption threshold. This is in contrast to the current rule's default liquidity fee, which applies to redemptions the business day after weekly liquid assets fall below the 10% threshold and continues to apply on subsequent days until the board determines that the liquidity fee is no longer in the best interests of the fund. Per the rule we are adopting, an institutional prime or institutional tax-exempt money market fund must apply a liquidity fee if its total daily net redemptions exceed 5% of the fund's net asset value based on flow information available within a reasonable period after the last computation of the fund's net asset

[134] *See, e.g.,* Fidelity Comment Letter; BlackRock Comment Letter; Capital Group Comment Letter; ICI Comment Letter; Comment Letter of Dimensional Fund Advisors LP (Apr. 11, 2022) (''Dimensional Fund Advisors Comment Letter''); Dechert Comment Letter.

[135] *See* 17 CFR 270.12d1–1 (generally requiring that the acquiring fund reasonably believes that the money market fund operates in compliance with rule 2a–7).

[136] *See, e.g.,* Fidelity Comment Letter; ICI Comment Letter; BlackRock Comment Letter; Capital Group Comment Letter; ICI Comment Letter; Dimensional Fund Advisors Comment Letter; Dechert Comment Letter; *but see* 2014 Adopting Release, *supra* note 26, at section III.C.5 (discussing the Commission's belief that unregistered money market funds are not immune to the risks posed by money market funds generally).

[137] *See* Capital Group Comment Letter.

[138] *See* Capital Group Comment Letter; ICI Comment Letter.

[139] *See* 2014 Adopting Release, *supra* note 26, at section III.C.5.

[140] As discussed above and in the Proposing Release, available evidence suggests that institutional investors were more sensitive to the possibility of redemption gates or liquidity fees in Mar. 2020 than retail investors, and institutional prime and institutional tax-exempt money market funds managed their portfolios to avoid having less than 30% of their total assets invested in weekly liquid assets, at which point a board could determine to institute gates or fees. In addition, the one money market fund to fall below this threshold in Mar. 2020 did not institute gates or fees. *See supra* sections I.B and II.A; Proposing Release, *supra* note 6, at sections I.B. and II.A. While we believe that institutional investors are more sensitive to redemption gates than to liquidity fees, some institutional investors may prefer to avoid the possibility of liquidity fees as well, if possible.

[141] One commenter, suggesting that discretionary fees would be sufficient, indicated that fund boards would have incentives to impose fees if redemptions reduced the fund's NAV and imposed material dilution, including due to legal and reputational risk associated with a failure to act. *See* Comment Letter of Federated Hermes, Inc. (July 5, 2023) (''Federated Hermes Comment Letter V''). Absent persuasive information that redemptions would have these stated effects, however, there may be contrary incentives to delay any fee determinations to avoid reputational risk or second-guessing associated with imposing a fee, particularly if comparable funds are not imposing fees.

[142] The proposal defined ''pricing period'' to mean the period of time in which an order to purchase or sell securities issued by the fund must be received to be priced at the next computed NAV. For example, if a fund computes a NAV as of 12 p.m. and 4 p.m., the fund would determine if it had net redemptions for each pricing period and, if so, apply swing pricing for the corresponding NAV calculation.

value on that day. If this threshold is crossed, the fund must apply a liquidity fee to all shares that are redeemed at a price computed on that day.[143]

Many commenters suggested that the proposed 4% market impact threshold was too low and that a redemption-based threshold for applying any charge to redeeming investors should be higher than 4%. Some commenters suggested that money market funds frequently experience net redemptions greater than 4% in normal market conditions due to seasonal redemption activity such as investor redemptions to fulfill payroll or tax obligations.[144] Some commenters suggested that money market funds do not incur transaction costs or dilution at such low levels of net redemptions due to the structure of these funds, including liquidity requirements that insulate funds from transaction costs, which allows funds to pay redemptions through maturing assets instead of secondary market activity even during periods with high redemption levels.[145] Some commenters suggested that if a fund has multiple NAV strikes per day, then the 4% threshold would be particularly problematic because the proposal divided the 4% figure by the number of pricing periods per day, resulting in a lower threshold.[146] One commenter suggested that swing pricing should be triggered by portfolio security sales that are needed to fund shareholder redemptions.[147] The same commenter stated that funds should have discretion in setting their own swing thresholds.

Many commenters suggested limiting the application of liquidity fees to periods of market stress. Several commenters suggested that fund boards should have discretion to determine when fees should apply, which would effectively limit fees to times of stress.[148] Several commenters expressed support for requiring a fund to apply a liquidity fee if it has net redemptions of more than 10%. These commenters generally suggested that the rule should pair a net redemption threshold with a weekly liquid asset threshold to ensure that the fee would apply only when the fund is under stress.[149] Some of these commenters suggested that a liquidity threshold is needed because a fund could meet net redemptions of more than 10% without dilution if it has sufficient liquidity and because redemptions exceeding more than 10% can occur under normal market conditions, although they are rarer than net redemptions exceeding 4% of net assets.[150] Some commenters suggested that pairing a weekly liquid asset threshold with a net redemption threshold would reduce the predictability of the liquidity fee trigger and reduce the likelihood of preemptive redemptions in comparison to the current rule, especially considering the effect of removing redemption gates from the rule, which commenters suggested were more likely to incentivize investor redemptions than liquidity fees.[151] Some commenters suggested a tiered approach with multiple thresholds and fee amounts, beginning with the dual threshold of 10% net redemptions and 30% weekly liquid assets and then using weekly liquid asset-based thresholds to determine when to increase the fee amount.[152] Two commenters discussed using a tiered approach with solely weekly liquid asset thresholds.[153] Commenters supporting a tiered approach generally suggested that beginning with relatively small fee amounts may reduce investor incentives to preemptively redeem in response to declines in liquidity in an effort to avoid a fee.[154] Separately, some commenters suggested thresholds based on the amount of net redemptions over multiple days to identify circumstances in which a fund is under stress.[155]

After considering comments, we are adopting a 5% net redemption threshold for mandatory liquidity fees. We recognize that some funds would trigger the proposed 4% net redemption threshold with some frequency under normal market conditions, particularly if the fund had multiple NAV strikes per day and therefore used a smaller threshold for each pricing period under the proposal. Based on historical flow data, we estimate that an average of 4.4% of institutional prime and institutional tax-exempt money market funds would cross a 4% net redemption threshold on a given day.[156] To reduce the burdens of the liquidity fee requirement and to reduce the frequency at which the requirement may trigger under normal market conditions, when liquidity costs and the benefits to remaining shareholders of imposing liquidity fees are likely small, we are increasing the threshold to 5%. We estimate that an average of 3.2% of institutional funds would cross a 5% net redemption threshold on a given day. While funds may still cross the 5% threshold under normal market conditions, we anticipate that a fund's liquidity costs generally will be *de minimis* under those circumstances, and the final rule will not require a fund to apply a fee when estimated costs are *de minimis.*[157] We are also making other changes to the final rule that we believe will reduce the burdens of determining the amount of the fee, as discussed below.

Consistent with the swing pricing proposal, the final rule permits a fund to use a lower net redemption threshold than is required.[158] Allowing a fund's board (or delegate) to use a net redemption threshold below 5% for purposes of applying mandatory fees is designed to recognize that there may be circumstances in which a smaller threshold would be appropriate to mitigate dilution of fund shareholders. For example, this may be the case when

[143] *See* amended rule 2a–7(c)(2)(ii).

[144] *See, e.g.,* Morgan Stanley Comment Letter; Bancorp Comment Letter; Federated Hermes Comment Letter I; IIF Comment Letter; SIFMA AMG Comment Letter; BlackRock Comment Letter; Federated Hermes Comment Letter II.

[145] *See, e.g.,* Allspring Funds Comment Letter; Fidelity Comment Letter; T. Rowe Comment Letter; US Chamber of Commerce Comment Letter; Vanguard Comment Letter; Western Asset Comment Letter; SIFMA AMG Comment Letter; Federated Hermes Comment Letter II.

[146] *See, e.g.,* Bancorp Comment Letter; ICI Comment Letter.

[147] *See* Capital Group Comment Letter.

[148] *See, e.g.,* ICI Comment Letter (suggesting that the rule require fund boards to consider certain enumerated factors when deciding whether to implement a liquidity fee, subject to a determination that implementing fees is in the best interests of the fund and its shareholders and is necessary to prevent material dilution or other unfair results); JP Morgan Comment Letter; Federated Hermes Comment Letter II; Invesco Comment Letter; SIFMA AMG Comment Letter.

[149] *See, e.g.,* Invesco Comment Letter; IIF Comment Letter; SIFMA AMG Comment Letter (explaining that the 10% net redemption threshold was selected because it represents half of the commenter's preferred 20% daily liquid asset threshold and is less likely to be triggered by routine, expected flow activity, particularly if paired with a liquidity threshold); ICI Comment Letter.

[150] *See, e.g.,* SIFMA AMG Comment Letter; ICI Comment Letter.

[151] *See, e.g.,* IIF Comment Letter; JP Morgan Comment Letter; BlackRock Comment Letter.

[152] *See, e.g.,* BlackRock Comment Letter; JP Morgan Comment Letter; IIF Comment Letter.

[153] *See* Western Asset Comment Letter (suggesting a mandatory approach to tiered fees that would first trigger when weekly liquid assets are below 30%); ICI Comment Letter.

[154] *See, e.g.,* ICI Comment Letter; Western Asset Comment Letter; JP Morgan Comment Letter.

[155] *See, e.g.,* Morgan Stanley Comment Letter (suggesting a framework in which fees would apply when net redemptions are more than 15% over two consecutive trading days); State Street Comment Letter (suggesting that fees should trigger if net redemptions exceed 5% for three consecutive days and the fund has experienced an event that requires reporting on Form N–CR).

[156] *See infra* section IV.C.4.b.i (analyzing historical daily redemptions out of institutional prime and institutional tax-exempt money market funds between Dec. 2016 and Oct. 2021).

[157] *See* amended rule 2a–7(c)(2)(iii)(D).

[158] *See* amended rule 2a–7(c)(2)(ii); proposed rule 2a–7(c)(2)(vi)(B).

a fund holds a larger amount of less liquid investments or in times of stress.

We are not adopting an even higher net redemption threshold, or a net redemption threshold paired with a liquidity threshold, as some commenters suggested. While a higher net redemption threshold, such as 10%, would reduce the likelihood of a fund crossing the threshold under normal market conditions when liquidity costs are low, it likewise would reduce the likelihood of a liquidity fee applying in the beginning wave of redemptions in a crisis period. For example, of the outflows from institutional prime and tax-exempt money market funds during the week of March 20, 2020, approximately 31% of fund days were above the 5% threshold, but only 11% of fund days were above the 10% threshold.[159] If investors can redeem during the beginning stages of a crisis with a very low likelihood of incurring a fee, that may incentivize investors to redeem early, contributing to a first-mover advantage. In addition, we considered the effect of different net redemption thresholds during periods of prolonged stress, which might have occurred in March 2020 absent government intervention, by modeling fund portfolios and liquidity levels.[160]

If we were to pair a 10% net redemption threshold with a weekly liquid asset threshold, that would further reduce the likelihood of a liquidity fee applying to the first wave of redemptions in a stress period. Moreover, adding a weekly liquid asset threshold to a net redemption threshold, or using a weekly liquid asset threshold on its own, would allow investors to better predict when a liquidity fee may apply, which may contribute to preemptive redemptions. Incorporating a fund's weekly liquid assets into the liquidity fee trigger also may incentivize fund managers to maintain weekly liquid assets above the relevant threshold, creating a disincentive for using available liquidity to meet redemptions and potentially contributing to dilution of remaining shareholders through the sale of longer-term portfolio securities in a stress period. In March 2020, we observed both of these unintended results from the tie between liquidity fees and weekly liquid assets in the current rule. As for a tiered approach, we understand some commenters' views that using a weekly liquid asset threshold to trigger a very small fee amount may be less likely to trigger preemptive runs at the outset. However, a tiered approach that increases the fee amount according to a specific schedule as liquidity declines below predictable thresholds has the risk of ''cliff effects.'' Specifically, a tiered approach may incentivize investors to redeem before a fund crosses a lower, predictable weekly liquid asset threshold to avoid a nonlinear jump in the fee size.

We also are not adopting other liquidity fee approaches that some commenters suggested. A net redemption threshold based on net redemptions over multiple trading days may lead to a threshold that is more predictable than same day net redemptions, as funds provide information about the prior day's net flows on their websites.[161] In addition, a multi-day threshold would contribute to operational complexity if the fee applied to redemptions that trigger the fee, as a fund would need to apply a fee to redemptions that occurred on a prior day. Alternatively, if the fee applied to redemptions occurring after the threshold is triggered, this approach would contribute to a first-mover advantage, as investors redeeming at the onset of market stress would be significantly less likely to incur a fee.

We also are not adopting an approach that allows funds to establish their own criteria for triggering liquidity fees or that relies on board considerations of certain criteria. If institutional funds were permitted to establish their own criteria for triggering liquidity fees, we believe they may use criteria that are unlikely to trigger liquidity fees, particularly if they perceive the potential for reputational harm from imposing fees. With respect to board determinations, as discussed in the Proposing Release, we do not believe an approach that relies on board determinations would result in timely decisions to impose liquidity fees on days when the fund has net redemptions that, due to associated costs to meet those redemptions, will dilute the value of the fund for remaining shareholders.[162] For instance, it may take time for a fund board to convene and determine whether to apply a liquidity fee with respect to any particular stress event. We do not believe that these discretionary approaches would provide an effective tool for addressing institutional shareholder dilution and potential institutional investor incentives to redeem quickly in times of liquidity stress to avoid further losses. Finally, we are not adopting a threshold based on when a fund must sell portfolio securities to satisfy redemptions because, as discussed above, we believe such an approach overlooks the costs redeeming investors impose by removing liquidity from the fund, including subsequent rebalancing costs, and by increasing the likelihood that the fund will need to sell less liquid assets to satisfy future redemptions.

When a fund crosses the 5% net redemption threshold, it must apply a liquidity fee to all shares that are redeemed at a price computed on that day. As a result, when the 5% net redemption threshold is crossed, the fee must be applied to all shares redeemed that day, including redemptions that are eligible to receive a NAV computed on that day even if received by the fund after the last pricing period of the day. This approach will require redeeming investors who cause the fund to exceed the threshold to bear the costs of their redemption activity, irrespective of when they redeem during the day. This approach is different from the current rule, which provides that default liquidity fees begin to apply on the day after the fund has crossed the 10% weekly liquid asset threshold. Compared to the current rule, the approach we are adopting is designed to better align the application of liquidity fees to those investors whose redemptions result in liquidity costs for the fund and to reduce potential first-mover advantages. We recognize, however, that funds and intermediaries may need to update their systems to apply fees to redemptions on the day the net redemption threshold is crossed.[163]

[159] *See infra* section IV.C.4.b.i (discussing this analysis and other analyses regarding net redemption thresholds for mandatory liquidity fees). ''Fund days'' refers to observations of daily redemptions using a sample set of funds during a particular period of time. Here, the fund days relate to a measure of daily outflows during the week of Mar. 20, 2020. To illustrate the analysis, we observed 43 institutional prime and institutional tax-exempt money market funds over the 5 days that week. This results in 215 (= 43 × 5) fund day observations. Using a net redemption threshold of 5%, we observed that during the week of Mar. 20 funds would have exceeded that threshold on 31% of fund days. This means that net outflows exceeded the 5% threshold on 67 (= 0.31 × 215) fund days during the week of Mar. 20.

[160] *See id.*

[161] *See* 17 CFR 270.2a–7(h)(10)(ii)(C).

[162] *See* Proposing Release, *supra* note 6, at n.95 and accompanying text.

[163] Under the current rule, the determination to apply discretionary liquidity fees could occur at any time during the day, meaning that funds and intermediaries would need to begin to apply fees to redemptions on that day. *See* 2014 Adopting Release, *supra* note 26, at n.383 and accompanying text. It is our general understanding, in light of the current rule, that there has been an industry expectation that a fund board would determine to impose discretionary fees after the end of a trading day, such that discretionary fees would begin to apply on the next morning.

Consistent with the final rule, the proposed swing pricing requirement would have applied a charge to redeeming investors who caused the fund to have net redemptions. However, the design of the net redemption threshold in the final rule is somewhat different from the proposal, which would have applied a charge to redeeming investors based on net redemption activity for each pricing period if a fund had multiple NAV strikes per day. Some commenters expressed concern about separately analyzing flows for each pricing period under the proposal. For example, some commenters stated that institutional money market fund investors tend to redeem in the morning and move remaining cash back into the fund toward the end of the day, making it more likely that funds would need to apply swing pricing in the morning even if investor activity for the day, on net, would not cross a threshold.[164] Some commenters expressed concern about potentially needing to calculate liquidity costs and apply a charge multiple times a day.[165] In addition, some commenters suggested that it would be particularly difficult to calculate liquidity costs under a tightly compressed timeline, which is especially a concern for funds that offer same-day settlement since the swing pricing adjustment had to occur before a fund published its NAV.[166]

The final rule will not distinguish between flows for different pricing periods during the day and, instead, will apply a fee to all investors who redeemed on that day if the threshold is crossed. This addresses commenters' concerns about applying a threshold to individual pricing periods during the day and reduces burdens by requiring no more than one liquidity fee determination per day. We recognize, however, that the requirement to apply a liquidity fee to all shares redeemed on the day the 5% threshold is crossed will likely require some adjustments for funds that offer multiple NAV strikes per day.[167] Specifically, we recognize that an investor may redeem at a pricing period in the morning or early afternoon, before the fund knows that it has crossed the 5% threshold for the day. Under these circumstances, the final rule will necessitate a fund that offers multiple NAV strikes to develop a method for applying the fee to shares redeemed in an earlier pricing period on that day. Funds might take different approaches to address this issue. For instance, among other potential approaches, the fund might apply the liquidity fee charge to the remaining balance in an investor's account if the investor did not redeem the full amount of its shares in the fund. Another approach would be to hold back a portion of the redemption proceeds until the end of the day when the liquidity fee determination is made.[168] Alternatively, a fund might develop a mechanism for taking back a portion of redemption proceeds that the investor has already received. Further, while not required, some funds might choose to reduce the number of NAV strikes they offer or no longer offer multiple NAV strikes for operational ease.[169] Funds and intermediaries may also develop other approaches to address this issue. Depending on a given fund's approach, a redeeming investor may experience a reduction in its access to liquidity relative to current practices. In addition, different approaches may have differing effects on investors or raise tax or other considerations. Overall, we believe it is unlikely that the mandatory liquidity fee would result in a redeeming investor being unable to access same-day liquidity.[170]

Some commenters questioned the fairness of applying a charge to certain types of investors who redeem on a given day. For instance, some commenters suggested that it would be unfair to apply a charge to investors who redeem and later purchase an identically sized investment on the same day, because these investors would incur costs despite having no net effect on liquidity.[171] One commenter suggested that it would be unfair for a shareholder redeeming a relatively small number of shares to be charged a liquidity fee because another shareholder redeemed a large number of shares and triggered the threshold.[172]

With respect to the application of a fee to an investor who has both redeemed and purchased the fund's shares on the relevant day, the final rule would permit funds to apply liquidity fees based on an investor's net transaction activity for that day. The current rule likewise provides this flexibility.[173] When the Commission adopted the liquidity fee framework in the current rule, however, several commenters suggested that it may be too operationally difficult and costly for funds to apply liquidity fees to shareholders based on their net activity for the day. As a result, while we are permitting a fund to apply fees based on a shareholder's net activity, this approach is not required, and a fund could instead apply liquidity fees to each redemption separately. As for the application of a liquidity fee to small redemptions, the final rule will require application of liquidity fees regardless of the size of the redemption. Consistent with the Commission's views in 2014 with respect to the current rule's liquidity fee framework, an exception from the mandatory liquidity fee for small redemptions would increase the cost and complexity of the amendments and could facilitate gaming on the part of investors because investors could attempt to fit their redemptions within the scope of an exception.[174]

Under the final rule, to determine whether a fund has crossed the 5% threshold, the fund will use information about its net flows for the day that are available within a reasonable period of time after the last pricing time of that day.[175] For example, if the fund's last NAV strike is as of 3 p.m., it would calculate its net flows within a reasonable time period thereafter such that the fund can calculate and apply any fee as of that day. The fund's approach to determining when to calculate net flows should be in its board-approved guidelines on the application of liquidity fees.[176] In determining when to calculate its net flows, a fund should consider historical data on when it typically receives flow

[164] *See, e.g.,* Invesco Comment Letter; Western Asset Comment Letter; SIFMA AMG Comment Letter; BlackRock Comment Letter.

[165] *See, e.g.,* Northern Trust Comment Letter; U.S. Chamber of Commerce Comment Letter; Invesco Comment Letter; ABA Comment Letter I; IIF Comment Letter; Mutual Fund Directors Forum Comment Letter.

[166] *See, e.g.,* SIFMA AMG Comment Letter; BlackRock Comment Letter; Capital Group Comment Letter.

[167] *See infra* section IV.C.4.b.ii.

[168] *See* BlackRock Comment Letter (stating that, under its preferred liquidity fee framework, it would plan for its multi-strike NAV funds to pay out a portion of redemption proceeds after each intraday NAV is struck, with the remaining redemption proceeds paid out after the close if no fee is required or reduced by the fee if a fee is required).

[169] *See infra* section IV.C.4.b.ii.

[170] *See id.*

[171] *See, e.g.,* Federated Hermes Comment Letter I; Allspring Funds Comment Letter; Americans for Tax Reform Comment Letter.

[172] *See* Dechert Comment Letter.

[173] *See* 2014 Adopting Release, *supra* note 26, at paragraph accompanying n. 380.

[174] *See id.* at section III.C.7.a (stating that such an exception for small redemptions would add cost and complexity both as an operational matter—for example, fund groups would need to be able to separately track which shares are subject to a fee and which are not, and create the system and policies to do so—and in terms of ease of shareholder understanding).

[175] *See* amended rule 2a–7(c)(2)(ii).

[176] *See infra* section II.B.2.b (discussing liquidity fee guidelines that the fund's board must approve if it delegates its responsibility for liquidity fee determinations to the fund's investment adviser or officers).

information and may also consider the period of time needed to calculate and apply fees. For example, if a fund generally receives substantially all of its flows by 5 p.m. and the process for determining the fee amount will take up to one hour, the rule would not require the fund to wait until 6 p.m. to calculate its net flows if, by 6 p.m., the fund typically has an even larger percentage of its flows. Using the same example, it would not be reasonable for this fund to calculate its net flows at 3:30 p.m., when it generally has less than a majority of its net flows by this time, given that the fund can reasonably expect, based on historical data, to have more net flow information by 5 p.m. and still be able to calculate and apply any fee as of that later time. This approach is designed to provide a fund with flexibility to calculate daily flows using the best information available to the fund while still being able to offer same-day settlement. Consistent with the proposal and with 17 CFR 270.18f–3 (''rule 18f–3''), an institutional fund with multiple share classes must include net flow activity across all share classes in the aggregate when determining if the fund has crossed the 5% threshold, rather than applying the threshold on a class by class basis.[177]

Some commenters stated that it may be difficult for funds to receive sufficient flow information to implement swing pricing.[178] A few commenters suggested that using estimates of flows for swing pricing would raise potential NAV error and liability concerns.[179] A few commenters suggested that funds may need to establish earlier cut-off times for receiving investor orders.[180] As discussed below, the amended rule requires that funds calculate net redemptions based on actual flow data for the day, as opposed to estimates of flows. In addition, in a change from the proposal, we are not requiring funds to separately examine flows for each pricing period of the day or reflect the charge in the form of a NAV adjustment. We believe these changes help mitigate commenters' concerns about sufficiency of flow information, as well as liability and other risks.

As discussed in the Proposing Release, institutional money market funds often impose order cut-off times to be able to offer same-day settlement, which requires that funds complete Fedwire instructions before the Federal Reserve's 6:45 p.m. Eastern Time (ET) Fedwire cut-off time.[181] Therefore, we believe many institutional funds would have a sizeable portion of their daily flows by the last pricing time of the day or within a reasonable period of time thereafter. We understand there will be circumstances in which the flow information a fund uses to determine whether it has crossed the net redemption threshold does not reflect the fund's full flows for that day. For example, a fund may receive subsequent cancellations or corrections to correct intermediary or investor errors, which modify the flows. In addition, the fund, or a share class of the fund, may settle some transactions on T+1 and receive flow information for those trades from intermediaries later, although they are eligible to receive the NAV as of the last pricing time.[182] To the extent that a fund received additional flow information after determining that it crossed the 5% threshold, but before applying a liquidity fee, the fund could take the additional flow information into account when determining the amount of the liquidity fee. While using the fund's net flows available within a reasonable period after the last pricing time to determine whether the fund has crossed the 5% threshold may result in false positives and false negatives under certain circumstances, we believe the associated risk is relatively low because we anticipate that funds typically will not impose liquidity fees under normal market conditions under the *de minimis* exception, and institutional money market funds often have net redemptions in periods of stress. Moreover, this risk is justified by the benefits of a framework that is easier for funds to operationalize and likely less prone to error than a framework based on estimated flows. In addition, to the extent that a fund did not have net redemptions of more than 5% within a reasonable period after the last pricing period but subsequently received additional net redemptions that would cause it to cross the threshold, the fund should consider imposing a liquidity fee under the discretionary fee provision discussed below.

We recognize that institutional money market funds that are used as cash management vehicles for other funds may have particular difficulty obtaining flow information by the last pricing time of the day.[183] As with other institutional funds that may cross the 5% threshold after the last pricing time of the day, these funds should consider imposing liquidity fees under the discretionary fee provision if they subsequently cross the 5% threshold under market conditions where estimated liquidity costs are not *de minimis.*

In general, the proposed swing pricing requirement would have required institutional money market funds to apply charges to reflect spread and certain other transaction costs for any level of net redemptions. We are not requiring institutional funds to apply a liquidity fee when net redemptions are below the 5% net redemption threshold. After considering comments, we do not believe that the benefits of the proposed approach justify the costs at this time because the structure of money market funds, including minimum liquidity requirements, helps mitigate dilution risk when the fund has low levels of net redemptions. In addition, the vast majority of money market funds already price portfolio securities at the bid price when striking their NAVs.[184] This market practice effectively passes spread costs on to redeeming investors, which means that the proposed application of swing pricing when a fund has low levels of net redemptions would have had limited effect.[185]

[177] *See* Proposing Release, *supra* note 6, at n. 112 and accompanying text.

[178] *See, e.g.,* ICI Comment Letter; Fidelity Comment Letter; Capital Group Comment Letter; Invesco Comment Letter.

[179] *See, e.g.,* Invesco Comment Letter; ICI Comment Letter; SIFMA AMG Comment Letter; ICI Comment Letter; *see also* Western Asset Comment Letter (expressing concern about erroneous application of market impacts if an investor or its intermediary partner notifies the fund of large outflows and then cancels the instructions late in the trading day).

[180] *See, e.g.,* Invesco Comment Letter; State Street Comment Letter; Dechert Comment Letter; IDC Comment Letter; JP Morgan Comment Letter; Federated Hermes Comment Letter I; Fidelity Comment Letter.

[181] *See* Proposing Release, *supra* note 6, at section II.B.2. Based on a 2021 analysis of information from CraneData, a majority of the prime institutional money market funds that impose an order cut-off time impose a 3 p.m. ET deadline for same-day processing of shareholder transaction requests. *See id.; see also* Fidelity Comment Letter (stating that its prior publicly offered institutional prime fund that offered same-day settlement used the same order cut-off and NAV strike times to allow the fund to calculate its NAV and wire redemption proceeds as quickly as possible to meet shareholder expectations and cash needs).

[182] *See* Federated Hermes Comment Letter II (stating that over a 3-month representative period, its institutional prime fund received 35.7% of trade notices after 3 p.m. and that generally settled on T+1).

[183] *See* Capital Group Comment Letter.

[184] *See* ICI Comment Letter; JP Morgan Comment Letter; *see also* Allspring Funds Comment Letter.

[185] *See* Financial Accounting Standards Board Accounting Standards Codification (''FASB ASC'') 820–10–35–36C. Generally accepted accounting principles (''GAAP'') provide that if an asset measured at fair value has a bid price and an ask price (for example, an input from a dealer market), the price within the bid-ask spread that is most representative of fair value in the circumstances shall be used to measure fair value, and that the use of bid prices for asset positions is permitted but not required for these purposes. *Id; see also* FASB ASC 820–10–35–36D (stating that use of mid-market pricing as a practical expedient for fair value measurements within a bid-ask spread is not precluded). Very generally, mid-market pricing

b. Administration of Mandatory Liquidity Fees

Under the final rule, an institutional fund's board will be responsible for administering the mandatory liquidity fee, but the board can delegate this responsibility to the fund's investment adviser or officers, subject to written guidelines established and reviewed by the board and ongoing board oversight.[186] The current rule, in contrast, does not permit a board to delegate its responsibility for liquidity fee determinations.[187] Boards will be able to delegate liquidity fee determinations under the final rule, unlike under the current rule, to facilitate timely application of liquidity fees on days when the fund has net redemptions that, due to associated costs to meet those redemptions, will dilute the value of the fund for remaining shareholders. This change will better allow funds to address liquidity fee determinations in periods of market stress when it may not be practical to assemble a quorum of the necessary directors in advance of the required application of a fee, particularly because the final rule requires application of fees to redemptions on the same day the 5% net redemption threshold is crossed. Because money market funds already have experience with liquidity fee requirements, it is appropriate to allow for the delegation of liquidity fee determinations. This approach is consistent with other delegable routine board functions under rule 2a–7.

Allowing a board to delegate the responsibilities for making liquidity fee determinations is similar to the proposed requirement for a board-designated swing pricing administrator. Also consistent with the proposal, the board will be responsible for oversight of the anti-dilution mechanism. Specifically, the board will be required to review its written guidelines and the delegate's liquidity fee determinations periodically. This approach is similar to the proposed board oversight of the swing pricing administrator.

Under the final rule's delegation provision, a board will need to adopt and periodically review written guidelines (including guidelines for determining the application and size of liquidity fees) and procedures under which a delegate makes liquidity fee determinations. Such written guidelines generally should specify the manner in which the delegate is to act with respect to any discretionary aspect of the liquidity fee mechanism (*e.g.,* whether the fund will apply a fee to a shareholder based on the shareholder's gross or net redemption activity for the relevant day, the fund's approach to determining the reasonable period after the last pricing period of the day when the delegate will measure the fund's flows for purposes of the 5% net redemption threshold). The board will also need to periodically review the delegate's liquidity fee determinations. This approach is consistent with rule 2a–7's approach to the delegation of board responsibilities generally and provides a framework for a board effectively to oversee liquidity fees imposed by the fund.

c. Calculation and Size of Mandatory Liquidity Fees

The mandatory liquidity fee provision we are adopting generally will require an institutional fund to determine the amount to charge redeeming investors by making a good faith estimate, supported by data, of the costs the fund would incur if it sold a pro rata amount of each security in its portfolio (*i.e.,* ''vertical slice'') to satisfy the amount of net redemptions, including spread costs, such that the fund is valuing each security at its bid price and any other charges, fees, and taxes associated with portfolio security sales (''transaction costs'') and market impacts.[188] This is a change from the current rule, which establishes a default fee of 1% and provides for board discretion to adjust that amount down or up (subject to a 2% limit), but does not prescribe how the board determines the liquidity fee amount. The final rule's approach, however, is similar to the proposal's swing pricing requirement and its inclusion of transaction costs and good faith estimates of market impacts in the swing factor when net redemptions exceed a specified level. In a change from the proposal, we are modifying the requirements for the liquidity fee calculation in response to comments, as well as providing additional guidance on how a fund may arrive at good faith estimates of the costs. For instance, the final rule will provide that if an institutional fund makes a good faith estimate that liquidity costs are *de minimis,* then the fund is not required to charge a liquidity fee.[189] In addition, if a fund cannot estimate in good faith the costs of selling a pro rata amount of each portfolio security, then the fund will apply a default fee of 1% of the value of the shares redeemed.[190]

As discussed in the proposal, the vertical slice approach may help prevent remaining shareholders from bearing the costs associated with fund redemptions and may help discourage investors from redeeming quickly during periods of market stress. Several commenters expressed concern about the proposed vertical slice assumption for estimating the costs imposed by redeeming investors. These commenters generally argued that because money market funds generally meet redemptions with available liquidity from maturing assets, rather than through the sale of a vertical slice of the fund's portfolio, the vertical slice assumption may impose costs on redeeming investors that the fund does not actually incur.[191] We understand that a money market fund does not typically sell a vertical slice of its portfolio to meet redemptions. However, the vertical slice approach is designed to account for the costs of leaving remaining investors with a less liquid portfolio and potential rebalancing costs. For example, if investor redemptions are met through daily or weekly liquid assets, the redemptions leave the fund with less liquidity, which increases the likelihood that further redemptions could require the fund to sell less liquid assets or incur costs in rebalancing the portfolio, particularly in periods of market stress when redemptions may be elevated. If we instead required funds to determine the amount of a liquidity fee based on the direct transaction costs incurred to meet redemptions, a fund would not charge a liquidity fee to redeeming investors until after other investors' redemptions had already extracted much of the

values a security at the average of its bid price and ask price. Since a seller generally asks for a higher price for a security than a buyer bids for that security, the mid-market price is incrementally higher than the bid price for a security, but lower than its ask price.

[186] *See* amended rule 2a–7(j). Consistent with rule 2a–7, the fund must maintain and preserve for six years a written copy of these guidelines. The fund also must maintain and preserve for six years a written record of the board's considerations and actions taken in connection with discharging its responsibilities, to be included in the board's minutes. *See* 17 CFR 270.2a–7(h)(1) and (2).

[187] *See* 17 CFR 270.2a–7(j) (stating that a board may not delegate determinations related to liquidity fees and temporary gates).

[188] Amended rule 2a–7(c)(2)(iii)(A); *see* Proposing Release, *supra* note 6, at section II.B.1; *see also* amended rule 31a–2(a)(2) (requiring funds to preserve for the prescribed periods all schedules evidencing and supporting each computation of a liquidity fee by the fund).

[189] Amended rule 2a–7(c)(2)(iii)(D).

[190] Amended rule 2a–7(c)(2)(iii)(C).

[191] *See, e.g.,* SIFMA AMG Comment Letter; BlackRock Comment Letter; State Street Comment Letter; ICI Comment Letter; Federated Hermes Comment Letter II; Bancorp Comment Letter; ABA Comment Letter I; Invesco Comment Letter; Fidelity Comment Letter; Allspring Funds Comment Letter; Keen Comment Letter; Western Asset Comment Letter.

fund's liquidity. Such a framework could incentivize preemptive redemptions to avoid liquidity fees in periods of stress and would not account for the full costs of removing liquidity from the fund in these periods.

Consistent with the proposal, the fee has two components: (1) transaction costs; and (2) market impact costs. The transaction costs category includes spread costs, such that the fund is valuing each security at its bid price, and any other charges, fees, and taxes associated with portfolio security sales.[192] Several commenters suggested that money market funds would not need to include spread costs in a charge to redeeming investors because most money market funds already value their portfolio securities at bid prices when striking their NAVs.[193] In light of this general market practice, we recognize that most funds will not have to include spread costs in their charged liquidity fee because they already use bid pricing. Per the rule, however, the few funds that do not currently use bid pricing will need to include spread costs in the fee.

The second component of the mandatory liquidity fee calculation requires that funds make a good faith estimate of the market impact of selling a vertical slice of a fund's portfolio to satisfy the amount of net redemptions.[194] The required market impact calculation is designed to provide a good faith estimate of the full liquidity costs of selling a vertical slice of a money market fund's portfolio because, for a money market fund's less liquid investments, market impacts may impose significant costs on a fund that should be borne by redeeming investors as opposed to remaining investors. This concern may be particularly acute when net redemptions are large or in times of stress and when a fund must sell less liquid investments. In terms of the mechanics, a fund would first establish a market impact factor for each security, which is a good faith estimate of the percentage change in the value of the security if it were sold, per dollar of the amount of the security that would be sold, if the fund sold a pro rata amount of each security in its portfolio to satisfy the amount of net redemptions, under current market conditions. A fund would then multiply the market impact factor by the dollar amount of the security that would be sold.[195]

Some commenters stated that it would be challenging to make a good faith estimate of the market impact of selling a vertical slice of a money market fund's portfolio because of the limited nature of the secondary market for funds' portfolio securities.[196] Some commenters expressed particular concern about funds' abilities to make good faith estimates of market impacts in stress events such as March 2020, when some underlying markets are prone to freezing and few transactions occur.[197] Some commenters suggested that the market impact calculations will require estimates in periods of market stress and will result in either errors or incorrect estimates.[198] One commenter suggested that estimating market impact costs *a priori* is challenging and requires judgments for which it may be difficult to have a high degree of confidence.[199] Some commenters suggested that it would take time to undertake the market impact calculation, which may create operational burdens that result in the need for earlier order cut-off times or a reduction of features like multiple NAV strikes per day or same-day settlement.[200] Some commenters suggested that funds need additional guidance to make the good faith estimates of market impacts that the rule will require.[201] One commenter suggested that if funds have too much discretion in making good faith estimates, then it could lead to artificial manipulation.[202]

We recognize that market impact costs of a transaction cannot be determined with certainty before the transaction occurs. As a result, the rule requires good faith estimates of these costs, given that a fund generally is not selling a vertical slice of its portfolio to meet net redemptions.[203] While the calculated liquidity fee will be based on good faith estimates and thus will not precisely reflect the liquidity costs of redemptions, this result is preferable to an overly low liquidity fee that does not attempt to include market impact costs, which can be a significant source of liquidity costs. We also recognize the challenges in assessing the amount of a liquidity fee to charge in times of market stress when underlying markets are frozen or transactions are rare. To reduce these challenges, we are providing guidance on one method funds could use to make a good faith estimate of the costs of selling a vertical slice of the fund's portfolio to meet net redemptions. In addition, like the proposal, the final rule permits a fund to make a good faith estimate of costs for each type of security with the same or substantially similar characteristics and apply those good faith estimates to all securities of that type in the fund's portfolio, rather than analyze each security separately.[204] Some commenters suggested that the Commission should provide additional guidance on how to determine which securities share substantially similar characteristics.[205] As discussed in the proposal, a fund could determine that the liquidity, trading, and pricing characteristics of a subset of securities justifies the application of the same costs and market impact factor to all securities of that type within its portfolio. Further examples of the kinds of criteria that fund might consider when determining how to group securities could include: issuance size, credit worthiness, number of other investors in the same issuance, maturity, industry, and geographic region. Also consistent with the proposal, and as reflected in the amended rule, we continue to believe it would be reasonable to assume a market impact of zero for the fund's daily and weekly liquid assets, since a fund could reasonably expect such assets to convert

[192] The proposal included within this category of costs specific references to both brokerage and custody fees. A few commenters suggested that brokerage fees would not be applicable to money market funds and custody fees would not increase when a fund has net redemptions. *See* Allspring Funds Comment Letter; *see also* Capital Group Comment Letter. In a change from the proposal, we have removed from the final rule those references, but we expect the transaction costs category to include, as applicable, any charges the fund would incur if it sold a pro rata amount of each security in its portfolio to satisfy the amount of net redemptions, whether in the form of brokerage, custody, or other fees.

[193] *See* Americans for Tax Reform Comment Letter; Allspring Funds Comment Letter; ICI Comment Letter; JP Morgan Comment Letter; *see also* Federated Hermes Comment Letter I.

[194] *See* amended rule 2a–7(c)(2)(iii)(A).

[195] *See* amended rule 2a–7(c)(2)(iii)(A)(*2*).

[196] *See, e.g.,* ICI Comment Letter; BlackRock Comment Letter.

[197] *See, e.g.,* Federated Hermes Comment Letter II; ICI Comment Letter; BlackRock Comment Letter; SIFMA AMG Comment Letter.

[198] *See* Federated Hermes Comment Letter I; Federated Hermes Comment Letter II; CCMR Comment Letter; BlackRock Comment Letter; *see also* Western Asset Comment Letter (suggesting that application of calculation is likely to vary across the industry and lead to inconsistencies).

[199] *See* ICI Comment Letter.

[200] *See, e.g.,* State Street Comment Letter; IIF Comment Letter; *see also* Capital Group Comment Letter; Northern Trust Comment Letter.

[201] *See, e.g.,* BlackRock Comment Letter; ICI Comment Letter (suggesting particular challenges exist for securities that do not trade frequently); Federated Hermes Comment Letter II; Capital Group Comment Letter.

[202] *See* Morgan Stanley Comment Letter.

[203] If a fund were to manipulate its estimates of market impact costs in an effort to increase or decrease the calculated fee amount, without regard to a reasonable assessment of costs under current market conditions, the manipulated estimates would not be ''good faith'' estimates.

[204] *See* amended rule 2a–7(c)(2)(iii)(B).

[205] *See* Capital Group Comment Letter; Fidelity Comment Letter; *see also* Federated Hermes Comment Letter II.

to cash without a market impact to fulfill redemptions (*e.g.,* because the assets are maturing shortly).[206] In addition, in a change from the proposal, we are requiring funds to apply a default fee of 1% of the value of shares redeemed if they are unable to make good faith estimates of these costs. This change is intended to reduce the burden on funds if good faith estimates are not feasible. The default fee provision applies if costs cannot be estimated in good faith and supported by data.

To develop good faith estimates of market impact costs supported by data, funds may consider using historical data to model the reasonably expected price concessions a fund may need to make to sell different amounts of a security under different market conditions. Specifically, among other potential methods for establishing a good faith estimate of the market impact of selling a vertical slice of the fund's portfolio to meet net redemptions, a fund could estimate and document in pricing grids the effect of selling different amounts of the security on a security's price for each group of securities in its portfolio with the same or substantially similar characteristics under different market conditions. Under a grid-based approach, a fund would develop separate grids for different market conditions, such as normal market conditions or periods with credit stress, liquidity stress, or interest rate stress (or a combination of such stresses).[207] Because market impact varies depending on the amount a fund sells, the grids would assess market impact of selling different amounts of a security. For example, a grid might estimate the market impact of selling various percentage- or value-based ranges of a security or group of securities. Thus, on a day a fund has net redemptions of more than 5%, it could calculate market impact by referring to the appropriate grid that reasonably approximates current market conditions and identifying the market impact estimate for the assumed amount to be sold under the required vertical slice analysis. If a fund uses grids to implement its market impact calculations, it generally should review the grids periodically and update them to account for recent market data. Under the rule, if a fund encountered unforeseen market conditions not contemplated in advance and the fund was not able to otherwise make a good faith estimate of its liquidity costs, then the fund would rely on the 1% default liquidity fee provision of the amended rule.[208]

After estimating the transaction costs and market impact costs of selling a vertical slice of the fund's portfolio to meet net redemptions, the fund will need to determine the liquidity fee amount, as a percentage of the value of the shares redeemed, to fairly allocate these costs across all redemptions. To do so, a fund will need information about gross redemptions from each intermediary for that day.[209] We recognize that some intermediaries may currently provide only net flow information to funds. In those circumstances, funds may need to update their arrangements with intermediaries to obtain the gross amount of redemptions in a timely manner.[210] We also recognize, as discussed above, that a fund may not have complete flow information at the time it determines to apply a fee. The fund's board-approved guidelines for implementing mandatory liquidity fees may want to specify the time by which the fund will review its flow information for purposes of calculating the liquidity fee amount. We recognize that this time may differ among funds. For example, some funds (*e.g.,* those that typically settle the vast majority of shareholder purchase and redemption activity on T+0) may use the same flow information they use to determine if the fund has crossed the 5% net redemption threshold. Other funds may determine to wait until a later point, particularly if they have developed a method for applying a fee after a trade is executed. As discussed above, some funds may develop such methods in connection with applying liquidity fees to redemptions that occurred in earlier pricing periods on the relevant day.

As discussed above, institutional funds may cross the 5% net redemption threshold under normal market conditions. Under these circumstances, the calculated liquidity fee amount is likely to be very small. For instance, under normal market conditions a fund generally will be able to assume no market impact for at least 50% of its assets invested in weekly liquid assets.[211] In addition, in many cases, the fund may estimate in good faith that the market impact costs of selling other positions in its portfolio will be minimal if dealer accommodation allows it to transact at or close to bid or mid prices under normal market conditions.[212] To recognize that there are limited benefits to imposing a very small liquidity fee under these circumstances, the final rule does not require a fund to impose the mandatory liquidity fee if its estimated liquidity costs are *de minimis.* Some commenters stated that money market funds would have minimal costs stemming from redemptions under normal market conditions or when the fund holds a significant amount of daily and weekly liquid assets.[213] The final rule provides that estimated costs are *de minimis* for purposes of the liquidity fee requirement if the amount of the fee would be less than 0.01% of the value of the shares redeemed.[214] The *de minimis* exception for liquidity fees is similar to the swing pricing proposal,

[206] *See* amended rule 2a–7(c)(2)(iii)(A)(*2*); Proposing Release, *supra* note 6, at section II.B.1.

[207] Funds may be able to leverage existing processes and historical data from existing sources, including stress testing, to develop and maintain such grids.

[208] *See* Federated Hermes Comment Letter II (suggesting that funds could develop schedules of estimated market impact costs stratified by the size of trade for different classes of securities, which would require periodic updating over time as market conditions evolve, but that these schedules may not be able to reflect good faith estimates in stressed conditions).

[209] Information about the gross number of shares redeemed will allow the fund to fairly allocate the liquidity costs across all redemptions. If a fund instead allocated the liquidity costs based on net redemptions, the fund would charge a higher fee amount per share redeemed and would collect more than its calculated liquidity costs when applied to each redemption on a gross basis. As a stylized example, assume a fund's estimated liquidity costs are $100 to sell a vertical slice of the fund's portfolio to meet net redemptions of 10,000 shares at a per share price of $1.0000 (or net redemptions of $10,000). On that day, 20,000 shares are redeemed in total (*i.e.,* not netted against purchase activity). Using gross redemptions to determine the fee, the fund charges redeeming investors $0.005 per share ($100 liquidity cost divided by gross redemptions of 20,000 shares) and collects the $100 of estimated liquidity costs ($0.005 per share multiplied by 20,000 shares). If the fund were to instead use net redemptions to determine the charge to apply to all redeeming investors, the charge would be $0.01 per share ($100 liquidity cost divided by net redemptions of 10,000 shares), and the fund would collect $200 ($0.01 per share multiplied by 20,000 shares redeemed).

[210] *See infra* section IV.C.4.a.ii.

[211] This is also true for the fund's portfolio securities that qualify as daily liquid assets but, by definition, daily liquid assets are also weekly liquid assets.

[212] This will not be the case for any illiquid securities the fund holds, but a money market fund may not acquire any illiquid security if, immediately after the acquisition, the fund would have invested more than 5% of its total assets in illiquid securities. *See* 17 CFR 270.2a–7(d)(4)(i). Under rule 2a–7, an illiquid security is a security that cannot be sold or disposed of in the ordinary course of business within seven calendar days at approximately the value the fund ascribed to it. *See* 17 CFR 270.2a–7(a)(18).

[213] *See, e.g.,* T. Rowe Comment Letter; Fidelity Comment Letter; Vanguard Comment Letter.

[214] *See* amended rule 2a–7(c)(2)(iii)(D). This provision does not reflect an interpretation of the term *de minimis* for any other purpose. *See also* Federated Hermes Comment Letter I (stating that if the portfolio cost of processing a net redemption does not move the money market fund's share price, the costs should not viewed as material to any money market fund investor and the costs should not be assessed).

which would not have required a fund to apply a swing factor if it would not have changed the fund's price per share.[215]

Some commenters suggested that, even in periods of market stress, the required calculation would result in small charges to redeeming investors.[216] For example, one commenter estimated the impact of swing pricing on its privately offered institutional prime money market fund on March 16, 2020, and seemed to suggest that the price change would have been slightly more than one basis point.[217] While the commenter did not provide significant detail about its analysis, the March 2020 Form N–MFP filing for this fund shows that the fund had daily liquid assets of around 30% and weekly liquid assets of around 53% at the end of the relevant week. Based on available information, we believe that the commenter was assuming a market impact of zero for these holdings, which would be consistent with the proposal and the final rule. This contributes to a lower estimated cost, and this cost would rise as the liquidity of the fund's portfolio declines. Another commenter analyzed the size of a swing factor adjustment if a fund held 50% of its assets in weekly liquid assets and applied a 100-basis point upward move in market yield for all other holdings (a historically large move based on a review of changes in three-month LIBOR rates since 2007, according to the commenter) as a proxy of market impact. The commenter stated that, in this analysis, a fund's price per share would only move down by $0.0007.[218] Because of rule 2a–7's risk limiting requirements, money market funds generally hold portfolios that are not subject to significant credit or interest rate risks. As a result, changes to a reference rate reflecting these risks, such as LIBOR, are somewhat muted relative to risk indicators applicable to longer-dated or lower credit quality portfolios even during periods of market stress.

We recognize that the estimated liquidity costs may be rather small when a fund holds high levels of daily and weekly liquid assets because, as discussed above, funds can assume a market impact of zero for these assets. Several commenters agreed that the market impact factor for daily liquid assets and weekly liquid assets should be set at zero.[219] In addition, as discussed above, several commenters suggested that the amount of a fund's liquidity should be a consideration for when a fee is triggered. While we decline to have a built-in liquidity threshold for triggering the application of fees in light of the experience with the current rule in March 2020, the determination of the amount of the fee will take into account the liquidity of the fund's portfolio.

In response to commenters' concerns about the ability of funds to make good faith estimates of the market impact of selling a vertical slice of the fund's portfolio in periods of market stress, particularly when the markets for portfolio securities are frozen, the final rule provides that a fund must impose a default liquidity fee of 1% if the fund is not able to make a good faith estimate of its liquidity costs.[220] Like the current rule, the default fee amount is 1% of the value of shares redeemed.[221] The new default fee, however, is not connected to a weekly liquid asset threshold and not subject to a decision by the fund's board as to whether the fee is in the best interests of the fund. In addition, unlike the current rule, the fund's board will not have discretion to modify the default fee amount, because the amended rule provides a separate framework for determining the liquidity fee amount based on good faith estimates and available data. Rather, funds will use the default fee when they cannot estimate transaction and market impact costs in good faith, and supported by data. We are persuaded by the comments that it may prove difficult at times for funds to make good faith estimates of liquidity costs in periods of market stress. The 1% default fee is designed to provide money market funds with the ability to apply a fee when the fund determines that its pricing grid, or other method for estimating transaction and market impact costs, does not reflect a good faith estimate of these costs in current market conditions.

We are also amending our recordkeeping rules to require funds to retain records that document how they determine the amount of any liquidity fee.[222] For example, if a fund establishes good faith estimates of its liquidity costs by using pricing grids or otherwise, it must preserve records supporting each fee computation. If the fund applies a 1% default liquidity fee, the fund must preserve records supporting its determination that it cannot establish a good faith estimate of its liquidity costs. If a fund determines that its liquidity costs are less than 0.01% of the value of the shares redeemed and therefore the fund is not required to apply a liquidity fee under the rule, the fund must preserve records supporting how it determined that the costs would be less than 0.01%.

The mandatory liquidity fee will not be capped since it is reflective of a fund's estimated liquidity costs. The uncapped fee is consistent with the proposed swing pricing requirement. This is a change, however, as compared to the current rule, which does not allow a fee to exceed 2% of the value of the shares redeemed.[223] Some commenters suggested that the rule should cap the amount of a liquidity fee to provide transparency to investors about the size of fee they may incur.[224] Some commenters expressed concern that an uncapped charge may cause investors to leave institutional money market funds due to concerns about the possibility of incurring high charges when redeeming.[225] In addition, some commenters suggested that it is unlikely that a fund's liquidity costs would exceed 2% because of the nature of money market fund portfolio holdings, maturity limits, and historical price

[215] *See* 17 CFR 270.2a–7(c)(1)(ii) (providing that an institutional money market fund must compute its price per share for purposes of distribution, redemption, and repurchase by rounding the fund's current net asset value per share to a minimum of the fourth decimal place in the case of a fund with a $1.0000 share price or an equivalent or more precise level of accuracy for funds with a different share price, for example $10.000 per share or $100.00 per share).

[216] *See, e.g.,* Capital Group Comment Letter; Fidelity Comment Letter.

[217] *See* Capital Group Comment Letter (stating that spread costs and other transaction costs would not have affected the fund's NAV by more than 1 basis point and suggesting that if the fund had experienced net redemptions of 8% on that day, the market impact would have decreased the fund's NAV by barely more than 3/100 of 1 basis point).

[218] *See* Fidelity Comment Letter (stating that if the fund had 30% weekly liquid assets and the market impact factor was 150 basis points, the NAV would decline by $0.0014).

[219] *See* Fidelity Comment Letter; Federated Hermes Comment Letter I; *see also* Mutual Fund Directors Forum Comment Letter.

[220] *See* amended rule 2a–7(c)(2)(iii)(C).

[221] *See* 2014 Adopting Release, *supra* note 26, at section III.A.2.c (discussing analysis in support of a default fee of 1% under the current rule); *infra* note 668 and accompanying text (discussing that a 1% default fee is generally consistent with the range of money market fund liquidity costs during March 2020 to the degree that discounts experienced by ultra-short bond exchange traded funds in this period may serve as a proxy for liquidity costs of money market funds).

[222] *See* amended rule 31a–2. The Commission similarly proposed to amend rule 31a–2 to require funds to preserve records supporting swing factor computations for the proposed swing pricing requirement.

[223] *See* 17 CFR 270.2a–7(c)(2)(ii)(A).

[224] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; *see also* Northern Trust Comment Letter (suggesting that a swing factor with no upper limit would impede the core functions of money market funds).

[225] *See, e.g.,* JP Morgan Comment Letter; Morgan Stanley Comment Letter; BlackRock Comment Letter.

movements.[226] We believe that the specific parameters in the rule for determining the liquidity fee amount sufficiently mitigate the concerns that a liquidity fee would place an undue restriction on investors' ability to redeem. Further, if a fund were to experience high costs associated with redemptions, we believe it is appropriate for redeeming investors to bear the costs their redemptions create for the benefit of remaining investors. As discussed below, we recognize, however, that it is unlikely a fund's calculated liquidity costs would exceed 2% of the value of shares redeemed.[227] Given our experience with investor behavior in March 2020, we also believe that requiring redeeming investors to internalize the liquidity costs of their redemptions will likely make investors consider potential redemption requests more carefully in periods of market stress, and will prevent remaining investors from bearing costs imposed on the fund by redeeming investors.

Some commenters suggested approaches for determining the amount of liquidity fees that differ from what we are adopting. For example, several commenters suggested a static fee amount, such as 1% or 2%.[228] Some commenters suggested tiered liquidity fees, where the rule would provide for identified increases to the liquidity fee amount as a fund crossed different thresholds meant to reflect increasing levels of stress.[229] These commenters suggested thresholds for applying liquidity fees that would only trigger in times of significant stress. Because, as discussed above, a fund may cross the 5% net redemption threshold we are adopting under normal market conditions, we do not believe that a static fee amount is appropriate. We anticipate that liquidity costs generally will be *de minimis* under normal market conditions. We also decline to adopt tiered liquidity fee amounts. The commenters suggesting tiered liquidity fee amounts generally set specific weekly liquid asset thresholds for when the fee would increase. We believe this approach would establish ''cliff effects'' in the rule that investors may seek to avoid through preemptive redemptions, similar to the behavior we observed in March 2020.

3. The Continued Availability of Discretionary Liquidity Fees

We are largely retaining the discretionary liquidity fee provisions in current rule 2a–7, but without the tie between liquidity fees and weekly liquid assets.[230] The Commission proposed to remove the liquidity fee provision in rule 2a–7 for three reasons. First, the current rule's tie to liquidity thresholds had unintended consequences in March 2020. Second, institutional prime and institutional tax-exempt money market funds would be subject to the proposed swing pricing requirement, which was designed to address shareholder dilution and potential institutional investor incentives to redeem quickly in times of liquidity stress to avoid further losses. Third, the proposed increased liquidity requirements—which would have the largest effect on retail prime funds based on their average historical liquidity levels—should result in these funds being able to manage heavier redemptions than they have experienced during any previous stress period.[231] While the Commission did not propose to retain a discretionary liquidity fee provision in rule 2a–7, it did state that funds could use rule 22c–2 under the Act to impose redemption fees to mitigate dilution arising from shareholder transaction activity generally, including indirect costs such as liquidity costs, and asked for comment on whether instead of removing the current liquidity fee provisions, we should modify the circumstances in which a money market fund may impose liquidity fees.[232] Several commenters supported money market funds continuing to have the ability to impose discretionary liquidity fees without a liquidity threshold, whether achieved through rule 2a–7 or rule 22c–2.[233] One commenter stated that rule 2a–7 would be a more appropriate place to address the implementation of such fees for money market funds.[234]

We recognize that a discretionary liquidity fee provides money market fund boards with an additional tool to manage liquidity, particularly in times of stress. As a result, we are retaining a discretionary liquidity fee provision in rule 2a–7.[235] The discretionary liquidity fee we are adopting, like current rule 2a–7, applies to all non-government money market funds. Like the current rule, a government money market fund may choose to rely on the ability to impose liquidity fees.[236] Unlike the current rule, but consistent with the proposal's observation that funds could impose fees under rule 22c–2, the fee is not tied to a weekly liquid asset threshold.[237] Although several commenters suggested that investor redemptions in March 2020 were largely driven by concerns about the potential for redemption gates, and less so by concerns about liquidity fees, we continue to believe it is appropriate to remove the tie between discretionary liquidity fees and a liquidity threshold to reduce the possibility of incentivizing preemptive redemptions.[238] Many commenters agreed with removing this tie.[239]

Similar to the discretionary liquidity fee under current rule 2a–7, the discretionary liquidity fee we are adopting is designed to allow a fund board (or its delegate) the flexibility to determine when a fee is necessary based on current market conditions and the specific circumstances of the fund.[240] Under the amended rule, irrespective of weekly liquid asset levels (or redemption levels), a non-government money market fund will apply a discretionary fee if the board (or its delegate) determines that such fee is in the best interests of the fund. Such discretion, untethered from any weekly liquid asset requirement or prescribed factors for implementation, should lessen the likelihood that sophisticated

[226] *See, e.g.,* Federated Hermes Comment Letter I; Western Asset Comment Letter.

[227] *See infra* section IV.C.4.b.v.

[228] *See, e.g.,* ICI Comment Letter; Invesco Comment Letter; SIFMA AMG Comment Letter; Morgan Stanley Comment Letter (suggesting a liquidity fee of 2%); State Street Comment Letter.

[229] *See, e.g.,* JP Morgan Comment Letter; ICI Comment Letter; BlackRock Comment Letter; SIFMA AMG Comment Letter.

[230] *See* amended rule 2a–7(c)(2)(i); 17 CFR 270.2a–7(c)(2)(i).

[231] *See* Proposing Release, *supra* note 6, at section II.A.3.

[232] *See* 17 CFR 270.22c–2.

[233] *See, e.g.,* SIFMA AMG Comment Letter; Invesco Comment Letter; Federated Hermes Comment Letter I; Federated Hermes Comment Letter II; Federated Hermes Fund Board Comment Letter; Americans for Tax Reform Comment Letter; Fidelity Comment Letter; Schwab Comment Letter.

[234] *See* Federated Hermes Comment Letter I (suggesting that rule 22c–2 is less appropriate for money market funds because it was designed to deter market timing and the history of the rule indicates that it was not meant for money market funds).

[235] *See* amended rule 2a–7(c)(2)(i).

[236] *See* 17 CFR 270.2a–7(c)(2)(iii); amended rule 2a–7(c)(2)(i)(A).

[237] Under current rule 2a–7, a money market fund may impose a liquidity fee of up to 2% if the fund's weekly liquid assets fall below 30% of its total assets and the fund's board of directors determines that imposing a fee is in the fund's best interests. *See* 17 CFR 270.2a–7(c)(2)(i).

[238] *See, e.g.,* Invesco Comment Letter; BlackRock Comment Letter; Northern Trust Comment Letter; Fidelity Comment Letter.

[239] *See, e.g.,* Healthy Markets Association Comment Letter; Western Asset Comment Letter; Cato Inst. Comment Letter; Schwab Comment Letter; Federated Hermes Comment Letter I; Federated Hermes Comment Letter II; ICI Comment Letter.

[240] *See* 2014 Adopting Release, *supra* note 26, at section III.A.2.

investors can preferentially predict when a fee is going to be imposed, thus reducing the potential for a run or other adverse effects. Also, the possibility of a fund imposing discretionary liquidity fees during periods of stress is unlikely, on its own, to incentivize investors to preemptively redeem. As discussed, investors are more sensitive to gates than to liquidity fees. Moreover, as the Commission discussed in the Proposing Release, redemptions in March 2020 from retail and institutional non-government funds appear to have been unrelated to declines in market-based prices.[241] This suggests that money market fund investors are less sensitive to losses than they are to losing access to liquidity and may not preemptively redeem in response to the possibility of liquidity fees. In addition, while institutional investors reacted quickly to declines in liquidity in March 2020 and redeemed in large sizes, any similar behavior in the future that is intended to avoid a board (or delegate) determination to apply discretionary fees will increase the likelihood of a fund applying a mandatory liquidity fee under the amended rule. Thus, it will be more difficult for institutional investors to preemptively redeem under the amended rule to avoid any type of liquidity fee, including discretionary fees. As for retail investors, they appeared to be less sensitive to the possibility of redemption gates or liquidity fees in March 2020, and retail funds historically have experienced lower levels of redemptions in stress periods than institutional funds. Some commenters suggested that a discretionary liquidity fee would be a useful tool for fund boards when addressing dilution issues or unfair results.[242] We agree that funds will benefit by having the ability to mitigate the broader effects of preemptive runs and otherwise manage potential dilution.

The Commission previously expressed some concern that a purely discretionary trigger for liquidity fees could cause some funds to use fees when they are not under stress and in contravention of the principles underlying the Investment Company Act.[243] For example, this would be the case if a fund was not under any liquidity stress and applied a liquidity fee on redemptions to recover losses incurred in the fund's portfolio and to repair the fund's NAV. We would not consider a liquidity fee to be in the best interests of the fund under those circumstances.[244] The Commission also expressed concern that a discretionary threshold may result in a board being reluctant to impose fees (*e.g.,* out of fear that a fee would signal trouble for the fund or fund complex or could incite redemptions in other money market funds in the fund complex). The framework of the new mandatory liquidity fee reduces these concerns with respect to the discretionary liquidity fee provision we are adopting, because it is likely that some number of funds will cross the 5% net redemption threshold for mandatory fees in future periods of stress. This experience with the actual imposition of liquidity fees in the money market fund space should help mitigate the potential stigma of applying discretionary fees. This is in contrast to the current rule's 10% weekly liquid asset threshold for imposing default fees, as no fund has ever been required to consider fees under this provision. Regardless, the new rule requires funds to impose a discretionary fee when such fee is in the best interests of the fund.

The amended rule does not change the best interest standard by which a fund board (or its delegate) would determine to impose a fee. Like current rule 2a–7, the rule we are adopting requires a majority of directors who are not interested persons of the fund to agree that applying a liquidity fee is in the best interests of the fund. In a change from the proposal, we are amending rule 2a–7 to permit fund boards to delegate liquidity fee determinations to the fund's adviser or officers, subject to board guidelines and oversight.[245] Under this approach, a fund will need to adopt and periodically review board-approved written guidelines (including guidelines for determining the application and size of liquidity fees) and procedures under which a delegate makes such determinations.[246] Such written guidelines generally should specify the manner in which the delegate is to act with respect to any discretionary aspect of the liquidity fee mechanism (*e.g.,* whether the fund will apply a fee to a shareholder based on the shareholder's gross or net redemption activity for the relevant day). The board will also need to periodically review the delegate's liquidity fee determinations. This approach is consistent with rule 2a–7's approach to the delegation of board responsibilities generally and provides a framework for a board effectively to oversee liquidity fees imposed by the fund. Providing boards with the ability to delegate the responsibility for administering discretionary liquidity fees to the fund's adviser or officers also addresses the concerns we expressed in the proposal regarding potential delays in board action to impose a liquidity fee, which may create timing misalignments between an investor's redemption activity and the imposition of liquidity costs.[247] This is consistent with some commenters' suggestions that discretionary liquidity fees should be accompanied by enhanced policies, including escalation procedures to ensure timely consideration of the potential fees in times of stress.[248]

Like the current rule, our amendments will permit money market fund boards to impose a liquidity fee, if in the best interests of the fund, of up to 2%, and do not require a particular approach to determining the level of a fee. This approach is designed to preserve for the board (or its delegate) sufficient flexibility when making determinations regarding discretionary liquidity fees and to allow funds to rely upon current procedures for determining the amount of discretionary fees without the need to make operational or systems changes.[249] Some commenters suggested that discretionary liquidity fees (like the current rule) should be capped at 2%.[250] We agree that, given the latitude in determining the fee amount to impose, an upper limit on the fee amount continues to be appropriate. Some commenters seemed to suggest a lower cap for discretionary fees, such as 1%, but did not explain why a lower cap would be preferable.[251] A 2% upper

[241] *See* Proposing Release, *supra* note 6, at paragraph accompanying n. 48.

[242] *See, e.g.,* Americans for Tax Reform Comment Letter; CFA Comment Letter; Invesco Comment Letter; SIFMA AMG Comment Letter; Schwab Comment Letter; ICI Comment Letter.

[243] *See* 2014 Adopting Release, *supra* note 26, at paragraph accompanying n.234.

[244] *See, e.g., id.*

[245] *See* amended rule 2a–7(j) (removing language that expressly prohibited a fund's board of directors from delegating determinations related to liquidity fees).

[246] Because rule 2a–7 requires a majority of directors who are not interested persons of the fund to agree that applying a liquidity fee is in the best interests of the fund, a majority of directors who are not interested persons of the fund must agree to delegate the liquidity fee determinations to the fund's adviser or officers and must approve the liquidity fee guidelines the fund's adviser or officers would follow.

[247] *See* Proposing Release, *supra* note 6, at n.95 and accompanying text.

[248] *See, e.g.,* Federated Hermes Comment Letter I (suggesting that discretionary fees should reasonably approximate the cost of liquidity); CFA Comment Letter; Schwab Comment Letter.

[249] As with mandatory liquidity fees, funds will be required to preserve records supporting the computation of a discretionary liquidity fee. *See* amended rule 31a–2(a)(2).

[250] *See, e.g.,* Federated Herms Comment Letter I; Western Asset Comment Letter.

[251] *See* ICI Comment Letter (favoring a discretionary fee with a cap and providing an

limit will provide fund boards (or their delegates) with greater flexibility to impose a fee that is based on liquidity costs in times of stress than a lower limit. Moreover, 2% is an appropriate upper limit because, as discussed below, it is unlikely a fund's liquidity costs would exceed 2% of the value of shares redeemed.[252] In addition, given that the current rule contemplates a fee of up to 2%, funds and investors have experience with this metric as a maximum fee for discretionary liquidity fees.

4. Disclosure

Money market funds use Form N–MFP to report portfolio and other information to the Commission each month. In connection with the proposed swing pricing requirement, the Commission proposed to require reporting of the size and frequency of swing factor adjustments to a fund's NAV.[253] Because we are adopting liquidity fee provisions instead of swing pricing, the final amendments to Form N–MFP will instead require money market funds to report certain information related to any application of a liquidity fee. Specifically, we are amending Form N–MFP to require that money market funds report whether they applied a liquidity fee during the reporting period and, if so, information about each liquidity fee applied, including the date, the type of fee, and the amount.[254] This reporting requirement will apply to both mandatory and discretionary liquidity fees. To identify the circumstances for applying a liquidity fee (*i.e.,* the fund had daily net redemptions of more than 5% or the fund's board (or delegate) made a best interests determination), funds will be required to identify whether a fee was a mandatory fee or a discretionary fee. In addition, in the case of a mandatory liquidity fee, a fund will be required to identify whether the amount of the fee was based on good faith estimates of the fund's liquidity costs or was a default fee. This information will help investors and the Commission understand the extent to which funds are able to estimate their liquidity costs in good faith. The proposal did not provide for discretionary swing pricing or default charges if liquidity costs could not be estimated, but did discuss and request comment on these alternatives. Moreover, current reporting requirements on Form N–CR about the imposition of liquidity fees, which we are removing in favor of new reporting on Form N–MFP, provide information about whether a fee imposed under the current rule is a discretionary fee or a default fee.[255] In addition, in comparison to the proposal and current reporting requirements on Form N–CR, the final amendments provide more specificity about how to report the amount of the charge applied. Specifically, the final amendments will require funds to report the total dollar value of the fee applied to redemptions and the amount of the fee as a percentage of the value of shares redeemed. The percentage-based amount will allow investors and the Commission to compare fees across money market funds and better understand the amount of fees that funds may charge, while the dollar-based amount will provide investors and the Commission with information about the fund's total liquidity costs. Overall, the reporting requirement, like that proposed for swing pricing, will help the Commission monitor the size of the charges funds are applying to redeeming investors, as well as the frequency at which funds apply liquidity fees.

In addition, we are amending the narrative risk disclosure requirement in Form N–1A. The final rule will continue to require money market funds to provide narrative risk disclosure related to liquidity fees, as applicable, in their prospectuses, but we have modified the disclosure to reflect the amended liquidity fee framework.[256] The required narrative disclosures relate to both the mandatory and discretionary liquidity fees and vary depending upon the type of money market fund. As proposed, we are removing from the required narrative disclosures references to the suspension of redemptions because money market funds cannot impose gates under rule 2a–7 as amended.

The amendments also modify the required disclosures in a fund's Statement of Additional Information (''SAI'') that currently relate to both the imposition of liquidity fees and the suspension of fund redemptions.[257] The proposal would have removed the disclosures related to liquidity fees in light of the swing pricing mechanism and the proposed elimination of fees and gates from rule 2a–7. In a change from the proposal, the amended form will include liquidity fee disclosures designed to reflect the new liquidity fee mechanism. In a change from current Form N–1A, the required liquidity fee disclosures are no longer tied to weekly liquid asset thresholds. Also, amended Form N–1A, like the proposal, removes references to the suspension of fund redemptions. These changes reflect the amendments to rule 2a–7 that remove the tie between weekly liquid assets and liquidity fees and remove redemption gates from the rule.

The modified SAI disclosure will, like the current form, require a fund to report information about any liquidity fees imposed during the past 10 years, including the date a liquidity fee was imposed and the amount of the fee. The required SAI disclosure is similar to what funds will report in amended Form N–MFP, except the SAI disclosure will provide investors with a historical perspective over a 10 year look-back period. In addition, consistent with the proposal, because we are no longer requiring funds to report on Form N–CR when they impose liquidity fees, we are removing the current requirement to incorporate in the SAI disclosure, as appropriate, any information the fund reported on Form N–CR regarding the fee event and to point investors to the fund's Form N–CR filing for additional information.

The amended disclosure related to liquidity fees will improve transparency related to money market funds as well as assist investors in their assessment of a fund's overall risk profile. Moreover, the disclosure will provide investors and the Commission with historic context and a useful understanding of past stress events. Current and prospective fund investors could use this information as one factor to compare the potential costs of investing in different money market funds.

5. Tax and Accounting Implications of Liquidity Fees

In addition to the operational and similar concerns commenters raised about the proposed swing pricing requirement, some commenters raised questions about the tax and accounting implications of the proposed requirement. Because a liquidity fee framework is part of current rule 2a–7, adopting a liquidity fee provision

example of a cap of up to 1%); *see also* State Street Comment Letter (suggested a fixed fee, perhaps of 1%, when certain conditions are met); Invesco Comment Letters (suggesting a static fee of 1% would be suitable when conditions for market stress exist).

[252] *See infra* section IV.C.4.b.v.

[253] *See* Proposing Release, *supra* note 6, at section II.B.4 (proposing to require money market funds that are not government funds or retail funds to report the number of times the fund applied a swing factor over the course of the reporting period, and each swing factor applied).

[254] *See* Item A.22 of amended Form N–MFP.

[255] *See* Part E of current Form N–CR (requiring information about the fund's imposition of a liquidity fee, including the fund's weekly liquid asset level, which identifies whether a fee under the current rule is a discretionary fee or a default fee).

[256] *See* Item 4(b) of amended Form N–1A.

[257] *See* Item 16(g) of amended Form N–1A.

instead of swing pricing generally will resolve most of commenters' questions and concerns. The specific tax treatment of any liquidity fee regime, however, may depend on how the regime is structured, particularly with respect to timing.

In response to the proposed swing pricing requirement, several commenters raised concerns related to potential increased tax reporting burdens, including whether the wash sale rules would apply to redemptions in floating NAV money market funds using swing pricing.[258] Because the tax treatment of money market fund liquidity fees is already established, as current rule 2a–7 already includes liquidity fee provisions, our adoption of a modified liquidity fee framework avoids commenters' tax concerns associated with swing pricing. As the Commission has previously discussed, we understand that shareholders incurring a liquidity fee would generally treat the fee as offsetting the shareholder's amount realized on the redemption (decreasing the shareholder's gain, or increasing the shareholder's loss, on redemption). Funds would generally treat such fees as having no associated tax effect for the fund.[259] In addition, tax regulations provide for a simplified method of accounting for an investor's gain or loss on money market fund shares, where the gain or loss is based on the change in the aggregate value of the investor's shares during a selected computation period and on the net amount of purchases and redemptions during that period (the ''NAV method'').[260] Because under the NAV method a gain or loss is not associated with any particular redemption of shares, use of the NAV method also addresses any effect that a liquidity fee would have under the wash sale rule.[261] In addition, even if a shareholder does not use the NAV method, redemptions from floating NAV money market funds are not treated as part of a wash sale.[262] As discussed above, however, in the case of a fund that offers multiple NAV strikes per day, we recognize that there could be tax considerations associated with applying a liquidity fee to redemptions that occurred before the last pricing period, depending on a fund's chosen approach to applying a fee to such redemptions.

Some commenters discussed potential accounting implications of swing pricing. For example, some commenters questioned whether money market fund shares held by corporate entities would still qualify as cash equivalents under the swing pricing proposal.[263] Current U.S. GAAP defines cash equivalents as short-term, highly liquid investments that both are readily convertible to known amounts of cash and are so near their maturity that they present insignificant risk of changes in value because of changes in interest rates.[264] The Commission's continued position is that under normal circumstances, an investment in a money market fund that has the ability to impose a fee under rule 2a–7(c)(2) qualifies as a ''cash equivalent'' for purposes of U.S. GAAP.[265] Under normal market conditions, we generally would not expect the amount of a liquidity fee a fund charges to prevent a shareholder from continuing to classify the fund's shares as ''cash equivalent'' under U.S. GAAP. However, as is the case today, if events that give rise to credit or liquidity issues for funds occur, shareholders would need to reassess if their investments in that money market fund would continue to meet the definition of a cash equivalent.[266] If events occur that cause shareholders that are corporate entities to determine that their money market fund shares are not cash equivalents, the shares would need to be classified as investments, and shareholders would have to account for them accordingly.[267]

As for accounting implications of swing pricing for affected money market funds, some commenters raised questions about how to best reflect the use of swing pricing in financial statements and other disclosures. For instance, some commenters questioned the manner in which a fund should disclose its use of swing pricing in its financial statements and other materials.[268] Another commenter suggested that if the proposed swing pricing requirement modified the method of accounting for gains or losses in money market fund shares, then it would increase the burden on investors, money market funds, and brokers who would be required to implement new mechanisms to accommodate the changes.[269] Another commenter suggested that swing pricing could cause short term volatility in a fund's NAV, which could present internal accounting challenges should the recorded value of an investor's cash position appear to fluctuate on a day to day basis.[270] This commenter suggested that a liquidity fee mechanism would be preferable to swing pricing in light of the accounting concerns. Like the tax implications discussed above, our move to a liquidity fee requirement avoids these potential issues. Instead, funds are able rely upon existing guidance and established practices to address these accounting items.

C. Amendments to Portfolio Liquidity Requirements

1. Increase of the Minimum Daily and Weekly Liquidity Requirements

We are adopting, as proposed, the requirements that a money market fund, immediately after acquisition of an asset, hold at least 25% of its total assets in daily liquid assets and at least 50% of its total assets in weekly liquid assets.[271] Currently, the daily and

[258] *See, e.g.,* Northern Trust Comment Letter; Capital Group Comment Letter; ICI Comment Letter; SIFMA AMG Comment Letter; Federated Hermes Comment Letter II; Americans for Tax Reform Comment Letter; Bancorp Comment Letter.

[259] *See* 2014 Adopting Release, *supra* note 26, at section III.A.6 (discussing the tax treatment of redemption fees under rule 22c–2 and stating the belief that liquidity fees would receive the same Federal income tax treatment); *see also* Investment Income and Expenses (Including Capital Gains and Losses), Internal Revenue Service (IRS) Publication 550, at 41 (''The fees and charges you pay to acquire or redeem shares of a mutual fund are not deductible. . . . A fee paid to redeem the shares is usually a reduction in the redemption price (sales price).''), *available at https://www.irs.gov/pub/irs-pdf/p550.pdf.*

[260] *See* Method of Accounting for Gains and Losses on Shares in Money Market Funds; Broker Returns With Respect to Sales of Shares in Money Market Funds, 81 FR 44508 (July 8, 2016); 26 CFR 1.446–7.

[261] *See* 26 U.S.C. 1091. The ''wash sale'' rule applies when shareholders sell securities at a loss and, within 30 days before or after the sale, buy substantially identical securities. Generally, if a shareholder incurs a loss from a wash sale, the loss cannot be recognized currently and instead must be added to the basis of the new, substantially identical securities, which postpones the loss recognition until the shareholder recognizes gain or loss on the new securities.

[262] *See* Rev. Proc. 2014–45 (2014–34 IRB 388), available at *https://www.irs.gov/pub/irs-drop/rp-14-45.pdf.*

[263] *See, e.g.,* ICI Comment Letter; Bancorp Comment Letter (stating that corporate investors rely on the treatment of money market funds as cash and cash equivalents rather than investment securities).

[264] *See* FASB Accounting Standards Codification (''FASB ASC'') Master Glossary.

[265] *See* 2014 Adopting Release, *supra* note 26, at section III.A.7.

[266] *See id.*

[267] *Id.*

[268] *See* Capital Group Comment Letter; *see also* Comment Letter of Deloitte & Touche LLP (Apr. 11, 2022) (''Deloitte Comment Letter'') (requesting clarification as to whether a money market fund would be required to include the effect of swing pricing on total return in the financial highlights).

[269] SIFMA AMG Comment Letter; *see also* Deloitte Comment Letter (recommending guidance on the appropriate methodologies to calculate the per share impact of swing pricing for each class of shares).

[270] *See* JP Morgan Comment Letter.

[271] *See* amended rule 2a–7(d)(4)(ii) and (iii). Tax-exempt money market funds are not subject to the daily liquid asset requirements due to the nature of the markets for tax-exempt securities and the limited supply of securities with daily demand

weekly liquid asset requirements in rule 2a–7 are 10% and 30%, respectively.[272] Assets that make up daily liquid assets and weekly liquid assets are cash or securities that can readily be converted to cash within one business day or five business days, respectively.[273] Generally, the daily and weekly liquid asset requirements are designed to support funds' ability to meet redemptions from cash or securities convertible to cash even in market conditions in which money market funds cannot rely on a secondary or dealer market to provide liquidity.[274] As the Commission stated in the Proposing Release, we believe that the increased daily and weekly liquidity requirements will provide a more substantial buffer that would better equip money market funds to manage significant and rapid investor redemptions, like those experienced in March 2020, while maintaining funds' flexibility to invest in diverse assets during normal market conditions.

Commenters generally supported increasing the current minimum daily and weekly liquidity requirements for money market funds.[275] In particular, commenters expressed support for the Commission's overall goal of providing a stronger liquidity buffer for money market funds to provide liquidity during market stress events and/or prolonged periods of redemption pressure.[276] Some industry commenters and several academic and advocacy group commenters supported the 25% daily liquid asset and 50% weekly liquid asset requirements in the proposal.[277] Moreover, some commenters urged the Commission to consider higher liquidity thresholds relative to the proposal.[278] A commenter supporting the proposed minimum liquidity requirements asserted that attempting to increase liquidity once a market stress event has occurred is much more challenging than requiring a fund to hold a healthier percentage of liquid assets prior to a stress event in order to prevent, or at the least lessen, liquidity pressure on the fund.[279]

Many commenters, however, urged the Commission to adopt more modest increases to the daily and weekly liquid asset requirements.[280] Many of these commenters suggested required thresholds of 20% daily liquid assets and 40% weekly liquid assets.[281] Commenters expressed that a more modest increase to the liquidity requirements would be more appropriate given that the amendments to the current liquidity fee and redemption gate framework would allow money market funds to use existing liquid assets more freely to meet redemptions.[282] Several commenters asserted that the bright line established by the current rule's regulatory link between a fund's weekly liquid asset levels and the possibility of a fund imposing a fee or gate was the primary incentive for money market fund managers to maintain weekly liquid asset levels above 30% in March 2020, rather than using those assets to meet redemptions.[283] These commenters suggested that, absent this regulatory link, funds could have met redemptions in March 2020 as securities naturally matured into weekly liquid assets, without the need to sell less liquid, longer term assets. Accordingly, one commenter, in response to our analysis in the Proposing Release of the redemption patterns of institutional prime funds in March 2020 using hypothetical portfolios, asserted that 40% weekly liquid assets is more than sufficient liquidity to accommodate substantial ongoing redemptions absent a regulatory link between weekly liquid assets and the potential imposition of redemption gates.[284] Alternatively, a commenter suggested that the Commission should first analyze how funds react and operate under a regulatory framework that removes redemption gates before adjusting the minimum liquidity requirements.[285]

Several commenters also asserted that increasing the minimum liquidity requirements as proposed could reduce the spread between prime and government money market funds, resulting in lower investor demand for prime funds.[286] Specifically, commenters suggested that higher liquid asset requirements would result in lower yields for investors in prime funds because funds may have to sell off longer-term, higher-yielding securities in favor of short-term, lower-yielding securities to meet liquidity requirements.[287] Moreover, some commenters expressed that decreased investor demand for prime money market funds could have unintended consequences for the short-term funding market, such as reducing funding to private companies and financial institutions.[288] Some of these commenters also expressed that lower yields for prime funds could push investors to non-money market fund alternatives, including more opaque or less regulated investment products.[289]

In addition, some commenters argued that imposing higher minimum liquidity requirements, as a practical matter, could result in de facto higher minimums than imposed by regulations.[290] These commenters asserted that, despite the removal of

features. *See* 2010 Adopting Release, *supra* note 26, at n.243 and accompanying text. This would continue to be the case under the amended rule.

[272] *See* 17 CFR 270.2a–7(d)(4)(ii) and (iii).

[273] Daily liquid assets are: cash; direct obligations of the U.S. Government; certain securities that will mature (or be payable through a demand feature) within one business day; or amounts unconditionally due within one business day from pending portfolio security sales. *See* 17 CFR 270.2a–7(a)(8). Weekly liquid assets are: cash; direct obligations of the U.S. Government; agency discount notes with remaining maturities of 60 days or less; certain securities that will mature (or be payable through a demand feature) within five business days; or amounts unconditionally due within five business days from pending security sales. *See* 17 CFR 270.2a–7(a)(28).

[274] *See* 2010 Adopting Release, *supra* note 26, at n.213 and accompanying and following text.

[275] *See, e.g.,* SIFMA AMG Comment Letter; ICI Comment Letter; BlackRock Comment Letter; Invesco Comment Letter.

[276] *Id.*

[277] *See, e.g.,* Fidelity Comment Letter (expressing support for the proposed liquidity requirements with respect to institutional prime funds only); Schwab Comment Letter; Vanguard Comment Letter; Americans for Financial Reform Comment Letter; ICD Comment Letter.

[278] *See* Systemic Risk Council Comment Letter; Profs. Ceccheti and Schoenholtz Comment Letter; Prof. Hanson *et al.* Comment Letter (suggesting that if the rule's objective is to reduce the likelihood of future government support, minimum liquidity requirements would likely have to be set higher than proposed).

[279] *See* Fidelity Comment Letter.

[280] *See, e.g.,* ICI Comment Letter; CFA Comment Letter; SIFMA AMG Comment Letter; State Street Comment Letter; Western Asset Comment Letter; Healthy Markets Association Comment Letter.

[281] *Id.; cf.* IIF Comment Letter (suggesting 20% daily liquid asset and 30% weekly liquid asset thresholds); Bancorp Comment Letter (suggesting 25% daily liquid asset and 40% weekly liquid asset thresholds); Morgan Stanley Comment Letter (suggesting 25% daily liquid asset and 45% weekly liquid asset thresholds).

[282] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; Federated Hermes Comment Letter I; T. Rowe Comment Letter; Invesco Comment Letter.

[283] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; Federated Hermes Comment Letter I; T. Rowe Comment Letter; Invesco Comment Letter.

[284] *See* ICI Comment Letter (asserting that a fund with 40% weekly liquid assets would have decreasing weekly liquid assets in the first several weeks, but would stabilize after five weeks at nearly 30% weekly liquid assets, assuming the redemption patterns of prime money market funds in Mar. 2020); *see also* Proposing Release, *supra* note 6, at section II.C.1.

[285] *See* SIFMA AMG Comment Letter.

[286] *See, e.g.,* ICI Comment Letter; JP Morgan Comment Letter; Federated Hermes Comment Letter I.

[287] *See, e.g.,* Dechert Comment Letter; Americans for Tax Reform Comment Letter.

[288] *See, e.g.,* ICI Comment Letter; Federated Hermes Comment Letter I; Invesco Comment Letter; CCMR Comment Letter.

[289] *See* CCMR Comment Letter; *see also* Federated Hermes Comment Letter I; SIFMA AMG Comment Letter.

[290] *See* BlackRock Comment Letter; SIFMA AMG Comment Letter; Sen. Toomey Comment Letter.

redemption gates from rule 2a–7, institutional investors will continue to view weekly liquid assets as the primary metric of liquidity and health of a money market fund. Consequently, these commenters suggested that fund managers will still be incentivized to maintain liquid assets above the regulatory minimums, particularly since fund liquidity levels will continue to be publicly available on a fund's website. Conversely, a commenter asserted that, absent a regulatory tie between liquidity levels and the potential imposition of a redemption gate, fund managers could be incentivized to carry less liquidity.[291] Some commenters also suggested that a fund that consistently maintains liquidity closer to the minimum requirements likely does so because it has determined that holding more liquid assets is unnecessary to effectively manage its redemptions and overall liquidity profile.[292]

Some commenters suggested that minimum liquidity requirements should vary based on a money market fund's investor base.[293] For example, in light of the fact that the outflows for retail prime money market funds were not as heavy as those experienced by institutional prime money market funds in March 2020, some commenters urged the Commission to consider whether an increase in liquidity minimums for retail funds is necessary to the same degree as for institutional money market funds.[294] Some commenters asserted that, relative to institutional investors, historically retail investors display more stable and predictable redemption behavior in all market conditions.[295] These commenters therefore believe that it would be more appropriate for the Commission either to not increase the liquidity requirements or to implement more modest increases for retail money market funds. In addition, one commenter suggested that liquidity requirements should vary depending on a fund's investor concentration, with greater liquidity requirements for funds with larger levels of investor concentration.[296]

Some commenters opposed increasing rule 2a–7's current minimum liquidity requirements for any type of money market fund.[297] A few of these commenters reasoned that the rule's current requirement for a money market fund to hold sufficient liquidity to meet reasonably foreseeable shareholder redemptions renders further increases in the rule's minimum liquidity requirements unnecessary.[298] Further, one commenter explained that this obligation should continue to be tailored using properly considered know-your-customer procedures, which provide fund managers with investor information that is helpful for managing fund liquidity.[299] Conversely, another commenter stated that there are limits to know-your-customer procedures, such as the use of omnibus accounts masking individual shareholder activity and identity, and the reality that some investors may have unpredictable cash flow needs that even the investor cannot predict.[300]

We are adopting, as proposed, requirements for money market funds to hold a minimum of 25% daily liquid assets and 50% weekly liquid assets because we believe it is important for money market funds to have a strong source of available liquidity to meet daily redemption requests, particularly in times of stress, when liquidity in the secondary market can be less reliable for many instruments in which they invest. Although we considered lower liquidity requirements relative to the proposed thresholds, our analysis suggests that 25% daily liquid assets and 50% weekly liquid assets paired with our other amendments would be sufficient to allow most money market funds to manage their liquidity risk in a market crisis, while lower minimum levels of liquidity may not provide an adequate buffer during a market crisis.[301] For example, the largest weekly outflow in March 2020 was around 55%, and the largest daily outflow was about 26% (both well above the respective weekly liquid asset and daily liquid asset thresholds of 30% and 10%).

In response to a commenter's conclusion that, pursuant to its data analysis, daily liquid asset and weekly liquid asset minimums of 20% and 40%, respectively, would serve as sufficient levels of liquidity during a market stress event after we remove the connection between weekly liquid assets and the consideration of gates, we conducted further analysis to probe this assertion.[302] Our updated analysis takes into account the potential effect of removing the tie between liquidity thresholds and fees and gates. It also modifies certain assumptions in the commenter's analysis that are not in line with the observed variations in redemption patterns across funds during the stress of March 2020 and typical portfolio constructions of funds.[303] With these adjustments, our analysis suggests that a significant number of funds would not be able to withstand multiple weeks of redemption stress if they began with 40% weekly liquid assets.[304] Specifically, our updated analysis observes that after two weeks of redemptions akin to the most significant week of outflows in March 2020, 30% of these portfolios would have weekly liquid assets of 13% or less. In contrast, 30% of portfolios that began with weekly liquid assets of 50% would have weekly liquid assets of 32% or less by the end of the two week period. Accordingly, we continue to believe that 25% daily liquid assets and 50% weekly liquid assets are appropriate minimum liquidity requirements that will better equip money market funds to manage significant and rapid investor redemptions in times of stress.

As discussed in the Proposing Release, the liquidity minimums that we are adopting are generally close to the average liquidity levels prime money market funds have maintained over the past several years.[305] We agree with commenters that at the higher levels of

[291] *See* JP Morgan Comment Letter.

[292] *See* SIFMA AMG Comment Letter; Federated Hermes Comment Letter I (arguing that ''managers will not attempt to skirt regulatory minimums and risk operating a portfolio with improper liquidity levels as doing so could jeopardize a particular fund's continued operations'').

[293] *See, e.g.,* Fidelity Comment Letter; Americans for Tax Reform Comment Letter; SIFMA AMG Comment Letter; T. Rowe Comment Letter; CFA Comment Letter.

[294] *Id.*

[295] *See* Fidelity Comment Letter; T. Rowe Comment Letter.

[296] *See* Comment Letter of HSBC Global Asset Management (Apr. 11, 2022) (''HSBC Comment Letter'').

[297] *See* Federated Hermes Comment Letter I; Sen. Toomey Comment Letter; T. Rowe Comment Letter.

[298] *See* Federated Hermes Comment Letter I; HSBC Comment Letter.

[299] *See* Federated Hermes Comment Letter I (stating that know-your-customer processes help a fund manager understand key information about the fund's investor base, such as investor type and liquidity preferences).

[300] *See* HSBC Comment Letter.

[301] *See infra* section IV.D.3.a (discussing the potential effect of various liquidity thresholds).

[302] *See* ICI Comment Letter (asserting that an institutional prime fund holding 40% weekly liquid assets can withstand 10 weeks of 16% redemptions and still have a weekly liquid assets above 25%). *See infra* section IV.C.2.a (discussing our updated analysis in more detail).

[303] *See infra* section IV.D.3.a (detailing the Commission's review of the commenter's data assumptions and providing additional economic analysis for various liquidity minimum levels).

[304] *Id.*

[305] *See* Proposing Release, *supra* note 6, at section II.C.1. According to analysis of Form N–MFP data from Oct. 2016 to Mar. 2023, the average amount of daily liquid assets and weekly liquid assets for prime money market funds was 38% and 54%, respectively. *See also* section IV.C.2.b, at Table 5 (reflecting the distribution of daily weekly liquid assets and weekly liquid assets among different types of prime money market funds, as of March 2023).

liquidity that funds typically have maintained, if money market funds had used their liquidity buffers in March 2020, many would have been able to fulfill redemption requests without selling longer-term portfolio securities or receiving sponsor support. However, we understand that rule 2a–7's fee and gate provisions have been a significant motivating factor for funds to maintain liquidity buffers well above the current regulatory minimums. Accordingly, the removal of the link between a fund's liquidity and the potential imposition of fees and gates on its own may result in funds subsequently reducing their liquidity levels.[306] As we saw in March 2020, markets can become illiquid very rapidly in response to events that fund managers may not anticipate. The failure of a single fund to anticipate such conditions may lead to a run affecting all or many funds. We continue to think it would be ill-advised to rely solely on the ability of managers to anticipate liquidity needs, which may arise from events the money market fund manager cannot anticipate or control. As expressed by a commenter, predicting cash flow needs can be challenging for investors and fund managers.[307] Accordingly, requiring a higher minimum amount of daily liquid assets and weekly liquid assets for all money market funds, as we are adopting in this release, limits the potential effect on fund liquidity that may otherwise arise from removing the fee and gate provisions from rule 2a–7, while also providing an additional level of liquid assets for funds to meet redemptions during times of market stress.

We generally disagree with commenters' assertions that the minimum liquidity requirements that we are adopting will have a significantly negative effect on the yield of prime money market funds or the demand for such funds. As discussed above, over the past several years prime money market funds generally have maintained levels of liquidity that are close to or that exceed the thresholds we are adopting in this release. This demonstrates that funds have the ability to operate at these minimum liquidity levels while continuing to serve as an efficient and diversified cash management tool for investors.[308] Accordingly, we believe that concerns raised by commenters related to reduced lending in the short-term funding market and pushing investors into alternative products are overstated.[309] Moreover, investors could allocate flows from prime money market funds into government money market funds, which may better match the risk tolerance and yield expectations for certain investors with cash management and capital preservation as their primary objectives. In addition, while we acknowledge that requirements to provide daily liquid asset and weekly liquid asset levels on funds websites and on Form N–MFP may encourage funds to hold liquidity buffers above the regulatory minimums, as some commenters suggested, this would not be required by our rules nor would it be necessarily an expected outcome. This is not necessarily an expected outcome because, relative to the current lower minimums, it seems less likely that an investor will be concerned that a fund will rapidly run out of daily or weekly liquid assets merely because its liquidity has dropped below the 25% or 50% thresholds we are adopting. In addition, since the final amendments remove the regulatory link between minimum liquidity levels and the potential imposition of fees and gates, it is also likely that investors will be less sensitive to funds approaching or temporarily dropping below a liquidity minimum.

With the exception of tax-exempt money market funds, which will continue to be exempt from the daily liquid asset requirements, the amendments do not establish different liquidity thresholds by type of fund.[310] As discussed in the Proposing Release, outflows in March 2020 were more acute in institutional prime money market funds than in retail prime money market funds. We do not know that redemption patterns would be the same in future periods of market turmoil, however, particularly without official sector intervention to support short-term funding markets.[311] In addition, while the amendments will require retail prime funds to maintain higher levels of liquidity than they have historically maintained on average, the resulting larger liquidity buffers will increase the likelihood that these funds can meet redemptions without significant dilution, which influenced our decision not to apply mandatory liquidity fee requirements to retail funds as part of this rulemaking.[312] Moreover, retail prime money market funds invest in markets that are prone to illiquidity in stress periods, and increased liquidity requirements will help provide flexibility so that these funds can meet redemptions in times of stress. Also, while we believe that unique factors like investor concentration are a relevant consideration when determining if a fund should have additional liquidity above the regulatory minimums, we are not adopting minimum liquidity requirements that vary depending on a fund's investor concentration, as suggested by a commenter.[313] We believe that a uniform approach encourages sufficient liquidity levels across all money market funds, thereby reducing the potential incentive for investors to flee from funds that might otherwise be perceived as holding insufficient liquidity during market stress events.

Lastly, we agree that money market funds have a general obligation to hold sufficient liquidity to meet reasonably foreseeable shareholder redemptions and any commitments the fund made to shareholders.[314] Policies and procedures related to onboarding shareholders, including know-your-customer processes, are important tools to gather information about the characteristics and liquidity needs of a fund's shareholders. However, we agree with the view expressed by a commenter that investors may have

[306] *See* Proposing Release, *supra* note 6, at n.81 (discussing a comment letter on the 2020 President's Working Group on Financial Markets report that stated that for the more than 6 years that the 30% weekly liquid asset threshold was in effect but not connected to fee and gate provisions, 68% of prime money market funds and 10% of tax-exempt money market funds dropped below the 30% weekly liquid asset threshold at least once, and at least one prime money market fund was below this threshold in nearly each week during this period).

[307] *See* HSBC Comment Letter.

[308] In addition, Form N–MFP data from 2022 reflects that prime money market funds have increased their daily and weekly liquidity levels while simultaneously increasing assets, further demonstrating that prime money market funds can maintain higher liquidity levels without reducing investor demand. *See also infra* section IV.C.2.b (discussing mitigating factors to the potential costs of the final amendments if, in fact, the amended liquidity requirements were to result in decreased demand for prime money market funds, as suggested by several commenters).

[309] *See also infra* section IV.C.2.b (discussing that the final amendments will have a limited impact on commercial paper markets since money market funds hold less than a quarter of outstanding commercial paper, while also acknowledging that if the final amendments were to result in less demand in the commercial paper markets, other investors, such as mutual funds or insurance companies, may absorb some of the newly available supply).

[310] *See supra* note 271 (discussing the current exception tax-exempt funds have from the required daily liquid asset investment minimum).

[311] As an example, if retail investors are merely slower to act initially in periods of market stress, retail prime and retail tax-exempt funds may need higher liquidity levels to meet ongoing redemptions if a stress period is not relatively brief.

[312] Based on analysis of Form N–MFP data, retail prime money market funds maintained average daily liquid assets of 30% and average weekly liquid assets of 46% during the period of Oct. 2016 through Mar. 2023. In contrast, institutional prime fund averages during this period were 44% and 59%, respectively.

[313] *See supra* note 296.

[314] *See* 17 CFR 270.2a–7(d)(4).

unpredictable cash flow needs that are challenging for the investor, much less the fund manager, to predict.[315] Further, this unpredictability can be exacerbated during market stress events. We also agree with the sentiment expressed by a commenter that requiring a level of liquidity designed to provide a buffer in the event of market stress at all times (*i.e.,* prior to a market stress event) is more effective than funds attempting to increase liquidity once a market stress event has occurred.[316] Moreover, although the rule includes the general obligation to hold sufficient liquidity to meet reasonably foreseeable redemptions and commitments, since 2010 the rule has also included a more prescriptive requirement to hold certain minimum liquidity levels. For the reasons discussed in this section, maintaining this general obligation while also increasing the specific minimum daily liquid assets requirement to 25% of total assets and weekly liquid assets requirement to 50% of total assets will provide a more substantial buffer that will make money market funds more resilient during times of market stress while maintaining funds' flexibility to invest in diverse assets during normal market conditions.

We are adopting, as proposed, minimum liquidity requirements of 25% daily liquid assets and 50% weekly liquid assets, rather than any higher threshold. While these liquidity levels do not reduce a fund's liquidity risk to zero, we believe that these thresholds would be sufficiently high to allow most money market funds to manage their liquidity risk in a market crisis. Moreover, the increase in funds' required daily and weekly liquid assets is not the only tool money market funds have to address redemptions under the final rule amendments. The amended rule includes a liquidity fee framework that is designed to mitigate the effect of large scale redemptions on remaining investors in the fund.

2. Consequences for Falling Below Minimum Daily and Weekly Liquidity Requirements

Currently, rule 2a–7 requires that a money market fund comply with the daily liquid asset and weekly liquid asset standards at the time each security is acquired.[317] A money market fund's portfolio that does not meet the minimum liquidity standards has not failed to satisfy the daily liquid asset and weekly liquid asset conditions of rule 2a–7; the fund simply may not acquire any assets other than daily liquid assets or weekly liquid assets, respectively, until it meets these minimum thresholds. As proposed, we will continue to maintain this approach with respect to the increased minimum liquidity thresholds that we are adopting.

Commenters generally supported maintaining the requirement that a money market fund comply with the minimum liquidity requirements at the time each security is acquired.[318] These commenters expressed that a potential regulatory penalty for falling below the liquidity minimum, such as mandating that funds over-correct to a higher liquidity level, could convert what should otherwise be useable liquidity to a de facto floor, with fund managers operating to avoid the potential penalty. They also asserted that a minimum liquidity maintenance requirement (*i.e.,* requiring that funds maintain the minimum liquidity at all times) would necessitate that funds hold an additional buffer in excess of the required liquidity levels at all times and could similarly disincentivize fund managers from using available liquidity in times of need.

We agree with concerns from commenters and continue to believe that imposing a new regulatory penalty when a fund drops below a minimum liquidity threshold, or requiring the fund to ''overcorrect'' in that case, could have the unintended effect of incentivizing some fund managers to sell less liquid assets into a declining market rather than use their daily and weekly liquid assets during market stress events out of fear of approaching or falling below the regulatory threshold.[319] Accordingly, compliance with the minimum liquidity requirements will continue to be determined at security acquisition. As proposed, the amendments to rule 2a–7 maintain the current approach and simply require that a fund that falls below 25% daily liquid assets or 50% weekly liquid assets may not acquire any assets other than daily liquid assets or weekly liquid assets, respectively, until it meets these minimum thresholds.[320]

As proposed, the amendments, however, will require a fund to notify its board of directors when the fund's liquidity falls to less than half of the required levels, that is, when the fund has invested less than 25% of its total assets in weekly liquid assets or less than 12.5% of its total assets in daily liquid assets (a ''liquidity threshold event'').[321] A fund must notify the board within one business day of the liquidity threshold event and must provide the board with a brief description of the facts and circumstances that led to the liquidity threshold event within four business days after its occurrence.[322]

The Commission received a few comments on this aspect of the proposal. Commenters generally supported board reporting for increased oversight, monitoring, and transparency.[323] Some of these commenters shared that many funds currently notify their board when their liquidity levels approach the regulatory minimum or some other specified threshold, suggesting that some form of the proposed board reporting requirement is already occurring in practice.[324] A commenter articulated that a 50% shortfall in liquidity is a significant enough event that signals likely liquidity pressures that the board should be aware of so that it can exercise its oversight duties.[325] Although several commenters expressed support for a requirement to notify the board following a liquidity threshold event, some commenters suggested that a liquidity threshold event should reflect a 50% decline from their preferred minimum liquidity levels (*e.g.,* 20% daily liquid assets and 40% weekly liquid assets).[326] Conversely, one commenter expressed concern with the general concept of the requirement, stating that a fund should only be required to notify its board during periods of extreme market volatility.[327] This commenter believes that there should be no required liquidity threshold for board notification, but funds should instead notify their boards only upon an unexpected event resulting in a fund's liquidity level falling materially below required levels. In contrast, another commenter

[315] *See* HSBC Comment Letter.

[316] *See* Fidelity Comment Letter.

[317] *See* 17 CFR 270.2a–7(d)(4)(ii) and (iii).

[318] *See, e.g.,* Fidelity Comment Letter; Federated Hermes Comment Letter I; CFA Comment Letter.

[319] *Id.*

[320] *See* amended rule 2a–7(d)(4)(ii) and (iii).

[321] *See* amended rule 2a–7(f)(4)(i).

[322] *See* amended rule 2a–7(f)(4)(i) and (ii). Similar to these board notification requirements, we are adopting a requirement that funds file reports on Form N–CR upon a liquidity threshold event. *See infra* section II.F.1.a.

[323] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; Dechert Comment Letter; JP Morgan Comment Letter.

[324] *See* ICI Comment Letter; SIFMA AMG Comment Letter; Federated Hermes Comment Letter I. *See also infra* note 682 and accompanying discussion.

[325] *See* Fidelity Comment Letter (stating that it does ''not expect shortfalls of this magnitude to be a common occurrence and, thus, the reporting obligations should not impose an undue burden on funds or advisors'').

[326] *See* ICI Comment Letter; JP Morgan Comment Letter; Fidelity Comment Letter.

[327] *See* Federated Hermes Comment Letter I.

suggested that funds should notify their boards if a fund's liquidity drops 25% or more below a regulatory minimum.[328]

Triggering a liquidity threshold event reflects that a fund's liquidity has decreased by more than 50% below at least one of the minimum daily and weekly liquid asset requirements. We agree with commenters suggesting that this is a significant event that likely signals liquidity pressure of which a fund's board should be aware. This provision is designed to facilitate appropriate board notification, monitoring, and engagement when such an event occurs, and will build on the practices some money market funds have today to inform fund boards about declines in liquidity, as explained by commenters. Further, we disagree with the commenter that suggested the rule should not include a specified level for a liquidity threshold event. A uniform approach that requires board notification at a 50% decline of the minimum daily or weekly liquidity levels is a simple and unambiguous metric that does not require subjective assessment of future cash flow needs or market conditions. We believe this requirement will provide the board with timely information in a context that would better facilitate the board's understanding and monitoring of significant declines in the fund's liquidity levels. Moreover, we are not adopting a smaller threshold for triggering board notifications, such as a 25% decline of the minimum daily or weekly liquidity levels. We recognize that some funds currently may notify their boards about such declines in liquidity, or may do so in the future as a matter of practice, and the final rule would not prevent or discourage these notifications. However, for purposes of a regulatory requirement to notify the fund's board promptly within one business day of a decline, it is reasonable to limit the requirement to significant declines of more than 50% below a minimum to limit potential disincentives for a fund to use available liquidity to meet redemptions and to align with the public reporting requirement on Form N–CR. After considering the comments on the proposal, we are adopting the liquidity threshold event board notification requirement as proposed.

3. Amendments to Liquidity Metrics in Stress Testing

As proposed, we are adopting amendments to the liquidity metrics in the rule's stress testing requirements to reflect amendments to the liquidity fee framework and the increase of regulatory liquidity minimums.[329] Each money market fund is currently required to engage in periodic stress testing under rule 2a–7 and report the results of such testing to its board.[330] Currently, one aspect of periodic stress testing involves the fund's ability to have invested at least 10% of its total net assets in weekly liquid assets under specified hypothetical events described in rule 2a–7. The Commission chose the 10% threshold because dropping below this threshold triggered a default liquidity fee, absent board action, and thus, had consequences for a fund and its shareholders.[331] The amendments that we are adopting no longer provide for default liquidity fees if a fund has weekly liquid assets below 10%. Further, we are increasing the weekly liquid asset minimum from 30% to 50%. Accordingly, we no longer believe that the rule should require funds to test their ability to maintain 10% weekly liquid assets under the specified hypothetical events described in rule 2a–7. Instead, we will require funds to test whether they are able to maintain sufficient minimum liquidity under such specified hypothetical events.[332] As a result, each fund will be required to determine the minimum level of liquidity it seeks to maintain during stress periods, identify that liquidity level in its written stress testing procedures, periodically test its ability to maintain such liquidity, and provide the fund's board with a report on the results of the testing.

Of the commenters that discussed liquidity stress testing, nearly all supported the proposal's removal of the 10% weekly liquid asset metric from the stress testing requirements.[333] Commenters generally agreed that the proposed principles-based approach would improve the utility of the stress test results. In contrast, one commenter supported the existing liquidity stress testing framework asserting more generally that when faced with an actual stressed market environment the results of stress tests themselves are of little value to the fund and its board.[334]

After considering comments, and given the amendments to the liquidity fee framework and the minimum liquidity requirements that we are adopting, consistent with the proposal, it is appropriate to permit each fund to determine the level of liquidity that it considers sufficient for purpose of the rule's stress testing requirements, instead of continuing to provide a bright-line threshold that all funds must use uniformly for internal stress testing. This approach is designed to improve the utility of stress test results because they will reflect whether the fund is able to maintain the level of liquidity it considers sufficient in stress periods, which may differ among funds for a variety of reasons (*e.g.,* type of money market fund or characteristics of investors, such as investor concentration or composition that may contribute to large redemptions).

Separately, one commenter urged the Commission to further strengthen the stress testing requirements by, among other things, disclosing results to investors.[335] We are not requiring funds to disclose stress testing results publicly as part of this rulemaking. Stress testing is an important tool to evaluate different drivers of liquidity risks, and is designed to enhance the manager's and the board's understanding of the risks to the fund portfolio under extreme and plausible market conditions. Public dissemination of stress test results may not provide much utility to the public considering that stress testing is not standardized from fund to fund and the results could be prone to misinterpretation from the public, given the hypothetical nature of the exercise.[336]

D. Amendments Related to Potential Negative Interest Rates

If negative interest rates occur in the future, the gross yield of a money market fund's portfolio may turn negative. Under those circumstances, it would be challenging or impossible for a government or retail money market fund (or ''stable NAV fund'') to maintain its stable share price under the current

[328] *See* CFA Comment Letter.

[329] *See supra* section II.B.

[330] *See* 17 CFR 270.2a–7(g)(8).

[331] *See* 2014 Adopting Release, *supra* note 26, at section III.J.2.

[332] *See* amended rule 2a–7(g)(8)(i) and (g)(8)(ii)(A).

[333] *See* ICI Comment Letter; SIFMA AMG Comment Letter; T. Rowe Comment Letter; Schwab Comment Letter.

[334] *See* Comment Letter of Federated Hermes Inc. (Nov. 1, 2022) (''Federated Hermes Comment Letter IV''). Separately, one commenter expressed concern if the fund's board, as opposed to its adviser, were required to determine the liquidity level used in the stress tests. *See* T. Rowe Comment Letter. The rule does not require the board specifically to make this determination, however, and also provides the ability for the board to delegate the responsibility to make most determinations under the rule to the fund's adviser. *See* 17 CFR 270.2a–7(j); amended rule 2a–7(j).

[335] *See* Systemic Risk Council Comment Letter (stating that ''the market lacks the tools to determine whether the tests are appropriately calibrated, reducing the usefulness of the exercise with no apparent benefit'').

[336] *See* Federated Hermes Comment Letter IV.

rule, as the fund would begin to lose money.[337]

Rule 2a–7, in its current form, does not explicitly address how money market funds must operate when interest rates are negative. However, rule 2a–7 states that government and retail money market funds may seek to maintain a stable share price by using amortized cost and/or penny rounding accounting methods. A fund may only take this approach so long as the fund's board of directors believes that the stable share price fairly reflects the fund's market based net asset value per share.[338] Accordingly, the proposal stated that if negative interest rates turn a stable NAV fund's gross yield negative, a board may reasonably believe the stable share price does not fairly reflect the market based price per share and the fund would need to convert to a floating share price under these circumstances as a result. The proposed rule also would have prohibited a money market fund from reducing the number of its shares outstanding to seek to maintain a stable NAV per share or stable price per share (the ''proposed RDM prohibition''). As explained in the Proposing Release, the Commission believed that an approach involving a fund reducing the number of its shares to maintain a stable NAV (referred to as ''share cancellation,'' ''reverse distribution mechanism,'' or ''RDM'') would not be intuitive for retail investors and may cause these investors to assume that their investment in a fund with a stable share price is holding its value while, in fact, the investment is losing value over time.[339] The Commission requested comment on the RDM mechanism and the proposed RDM prohibition.

After considering comments, we continue to believe that a scenario in which a fund has negative gross yield as a result of negative interest rates could lead a fund to convert to a floating share price, as the current rule already permits. However, in a change from the proposal, the final rule will also permit a stable NAV fund to reduce the number of its shares outstanding to maintain a stable NAV per share in the event of negative interest rates, subject to certain board determinations and disclosures to investors.[340] Accordingly, under the final rule, a stable NAV fund will be permitted to either convert to a floating NAV or to engage in share cancellation in this scenario. If a stable NAV fund converts to a floating NAV under these circumstances, the fund's losses will be reflected through a declining share price. If a fund uses a share cancellation mechanism, the fund will maintain a stable share price, despite losing value, by reducing the number of its outstanding shares. Investors in such a fund would observe a stable share price but a declining number of shares for their investment.[341]

With respect to the proposed RDM prohibition, commenters generally recommended that an RDM should be an available option for stable NAV funds to use, in addition to the conversion to a floating NAV.[342] Some commenters stated that many investors prefer a stable NAV investment.[343] Commenters stated that, for example, investors may rely on the ability of stable NAV funds to process cash balances through cash sweep programs offered by many brokers, banks, and fund sponsors, and such sweep programs typically cannot accommodate floating NAVs.[344] One commenter also observed that brokers and fund sponsors typically offer investors a range of bank-like features and services, such as ATM access, check writing, and ACH and Fedwire transfers that generally are only provided through stable NAV fund systems.[345] In response to concerns expressed in the Proposing Release about the possibility that RDM may confuse investors, particularly retail investors, some commenters stated that RDM and floating NAV are economically equivalent options that can be explained to investors in clear disclosures.[346] A few commenters provided sample disclosure to show how funds could explain RDM to investors.[347] One of these commenters suggested disclosure to investors in advance of a fund's use of RDM, as well as ongoing disclosure in account statements when RDM is in use.[348] Another commenter suggested a hybrid approach, where a fund could determine to offer an RDM to institutional investors or a floating NAV to retail investors.[349] Another commenter suggested that transitioning to a floating NAV could be more complex and confusing for investors than an RDM.[350] Commenters opposing the proposed RDM prohibition also generally suggested there is a remote likelihood of negative interest rates ever occurring in the U.S., and stated that there would be significant operational burdens and costs on investors and government and retail money market funds to prepare to convert from a stable NAV to a floating NAV.[351] Some commenters encouraged the Commission to continue a dialogue with the industry and study appropriate

[337] *See* Proposing Release, *supra* note 6, at section II.D (discussing the relevant provisions of the current rule).

[338] *See* 17 CFR 270.2a–7(c)(1)(i); *see also* 17 CFR 270.2a–7(g)(1) (requiring the fund's board to consider what, if any, action to take if the deviation between the fund's stable share price and the market-based value of its portfolio exceeds ½ of 1% and separately imposing a duty on the fund's board to consider appropriate action whenever the board believes the extent of any deviation may result in material dilution or other unfair results to investors or current shareholders).

[339] *See* Proposing Release, *supra* note 6, at section II.D (discussing potential investor confusion as the Commission's rationale for the proposed RDM prohibition).

[340] *Compare* amended rule 2a–7(c)(3) (permitting share cancellation under certain conditions) *with* proposed rule 2a–7(c)(3) (prohibiting share cancellation).

[341] *See* Proposing Release, *supra* note 6, at section II.D (discussing how use of an RDM helps a fund maintain a stable NAV and its potential effects on the fund's investors).

[342] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; Federated Hermes Comment Letter I; Allspring Funds Comment Letter; Fidelity Comment Letter; BNY Mellon Comment Letter; State Street Comment Letter; Sen. Toomey Comment Letter; Americans for Tax Reform Comment Letter; Dechert Comment Letter; CCMR Comment Letter; IDC Comment Letter. One commenter suggested that the Commission could permit a stable NAV money market fund to use a de-accumulating share class as an alternative approach, where negative income would result in a reduction in capital at the share class level and a fluctuating NAV per share. *See* BlackRock Comment Letter. We are not adopting provisions that would allow de-accumulating share classes at this time. We understand that such an approach would raise similar issues as a floating NAV for sweep programs and others and would raise tax considerations as well.

[343] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; Federated Hermes Comment Letter I; Allspring Funds Comment Letter; ABA Comment Letter I.

[344] *See, e.g.,* Federated Hermes Comment Letter I; Fidelity Comment Letter; ABA Comment Letter I; ICI Comment Letter; SIFMA AMG Comment Letter; Morgan Stanley Comment Letter; BNY Mellon Comment Letter.

[345] *See* ICI Comment Letter.

[346] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; Federated Hermes Comment Letter I; Allspring Funds Comment Letter; Fidelity Comment Letter; BNY Mellon Comment Letter; State Street Comment Letter; Sen. Toomey Comment Letter; Americans for Tax Reform Comment Letter; Dechert Comment Letter; CCMR Comment Letter; IDC Comment Letter.

[347] *See* Comment Letter of Federated Hermes (Aug. 30, 2022) (''Federated Hermes Comment Letter III''); SIFMA AMG Comment Letter.

[348] Federated Hermes Comment Letter III (providing examples of disclosure documents including an initial notice upon a board's adoption of new prospectus disclosure on the potential use of RDM with a hypothetical side-by-side example to illustrate how a negative interest rate accrual would be reflected in an investor's account statement using both an RDM and a floating NAV; ongoing prospectus disclosure; a draft website notice; and a mock account statement showing the RDM as a negative dividend adjustment and directing the investor to the fund's prospectus for additional information).

[349] *See* ABA Comment Letter I. The commenter's suggested hybrid approach would raise several financial reporting concerns and issues under rule 18f–3, which are beyond the scope of this rulemaking.

[350] *See* BNY Mellon Comment Letter.

[351] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter.

responses to negative interest rates, rather than adopt amendments to prohibit the use of RDM to address negative rates in this rulemaking.[352]

Other commenters supported the proposed RDM prohibition.[353] Two commenters suggested that share cancellation may be potentially confusing or misleading to investors, particularly retail investors, because it presents less transparency about the loss of value in a shareholder's aggregate investment.[354] One commenter stated that a floating NAV provides greater transparency to investors by showing daily fluctuations in the money market fund's NAV, thus enabling investors to monitor the value of their investment. This commenter also stated that the Commission's proposed approach would allow for international consistency among money market funds, as European money market fund regulations do not permit use of RDM.[355] Another commenter agreed with the goal of the proposed approach but encouraged the Commission to consider a longer implementation timeframe in the current rate environment to better balance the costs and benefits of the proposed approach.[356] One commenter encouraged the Commission to allow converted floating NAV funds to re-transition into stable NAV funds when yields become positive again.[357]

After considering the comments, we continue to believe it is valuable to address how government and retail money market funds should handle a negative interest rate scenario, as this is a question the industry has encountered multiple times over the years.[358] However, we are persuaded by commenters that the concern that investors may find share cancellation misleading or confusing can be addressed by establishing conditions for a fund's use of share cancellation, including required disclosures. We also recognize that some investors may prefer for a fund to maintain a stable NAV and that a share cancellation approach may be less disruptive or costly than converting to a floating NAV in some cases. As a result, should a negative interest rate scenario ever occur in future periods and cause a stable NAV fund to have negative gross yield, a stable NAV fund will have the flexibility under the final rule to use a floating NAV, as already permitted, or to use an RDM if the board determines that cancelling shares is in the best interests of the fund and its shareholders and the fund provides appropriate disclosure to mitigate the possibility of investor confusion.

Specifically, the final rule will permit a stable NAV fund to use an RDM only if the fund has negative gross yield as a result of negative interest rates (a ''negative interest rate event'').[359] Moreover, even in a negative interest rate event, the fund may use a share cancellation mechanism only if the fund's board of directors determines that reducing the number of the fund's shares outstanding is in the best interests of the fund and its shareholders.[360] Among other things, in determining whether cancelling shares to maintain a stable NAV is in the best interests of the fund and its shareholders, the board generally should consider the following:

- The capabilities of the fund's service providers and intermediaries to support the equitable application of RDM across the fund's shareholders, including considerations of whether the operational and recordkeeping systems of the service providers and intermediaries are able to process and apply a pro rata reduction of shares in shareholder accounts on a daily basis.
- Any state law limitations on share cancellation.

In determining the best interests of the fund and its shareholders, the board will also need to devote particular attention to questions concerning the applicable tax rules. Absent the use of a share cancellation mechanism, we understand that for Federal income tax purposes all fund distributions to shareholders with respect to the shares of a normally operating stable-NAV money market fund are treated as dividends, and shareholders' tax basis in each share is always $1. As a result of that constant basis, no gain or loss is recognized on redemption of the shares. On the other hand, if fund shares are cancelled pursuant to RDM, there can be no certainty that this tax treatment of distributions and shareholder basis would be unchanged. For example, share cancellation may result in shareholder basis that is more than $1 per share, and/or the treatment of shareholder distributions in part not as dividends but as a return of basis that may reduce basis per share. Either deviation from constant basis may require tax reporting by shareholders, funds, and fund intermediaries that are different from those expected for stable-NAV funds. There is no certainty either that the Treasury Department and the IRS will issue guidance to remove any tax challenges to the use of RDM share cancellation or that Congress will enact legislation to do so.

Accordingly, in determining whether cancelling shares to maintain a stable NAV is in the best interests of the fund and its shareholders, the board generally should also consider the following, taking into account the possibility that no new tax guidance or legislation may be forthcoming:

- The tax implications of share cancellation for the fund itself. Those implications for the fund's tax accounting concern not only any tax liability of the fund but also the tax attributes of the fund's distributions to its shareholders. It is particularly important to consider distributions in the latter part of a year whose earlier portion had contained losses and share cancellations.
- The tax implications of share cancellation for a fund's shareholders, including:
  - Whether investors will understand the effects that RDM share cancellation may have on their tax obligations, and whether they will be able to comply with any novelty and complexity in those obligations.
  - Whether the fund and its intermediaries will be able to administer shareholder tax reporting and related matters.
  - Whether the fund's use of RDM share cancellation would cause shareholders to experience any adverse tax consequences that they would not experience if the fund used a floating NAV instead, and, if so, whether these consequences are justified by the presence of benefits to shareholders from RDM share cancellation.
  - The tax characterization of the cancellation, and whether the cancellations directly produce losses for shareholders or, instead, there is a change in the bases of the shareholders' remaining shares, affecting the amount of subsequent loss or gain with respect to those shares.
  - If the cancellation directly produces a loss, when the shareholders recognize that loss, and what responsibility the fund and its intermediaries have for related reporting to the shareholders.

[352] *See, e.g.,* SIFMA AMG Comment Letter; Fidelity Comment Letter; State Street Comment Letter.

[353] *See* Northern Trust Comment Letter; Vanguard Comment Letter; CFA Comment Letter.

[354] *See* Northern Trust Comment Letter; CFA Comment Letter.

[355] *See* Northern Trust Comment Letter.

[356] *See* Vanguard Comment Letter.

[357] *See* CFA Comment Letter.

[358] *See* Proposing Release, *supra* note 6, at paragraphs accompanying nn.234 and 240.

[359] *See* amended rule 2a–7(c)(3).

[360] The ''best interests of the fund and its shareholders'' in this context is not intended to apply to each money market fund shareholder individually, but rather to the fund's shareholders generally.

The board also generally should review its determination that RDM share cancellation is in the best interests of the fund and its shareholders if circumstances change, including if a negative interest rate event appears to be reasonably likely to occur in the near future. Finally, the board may not delegate to the fund's investment adviser or officers the responsibility to make such determination.[361] A fund's board, and not its adviser, is in the best position to determine if share cancellation is in the best interests of the fund and its shareholders and, thus, is the appropriate entity to determine whether a fund will use share cancellation within the parameters of the rule.

The fund must provide timely, concise, and plain-English disclosure about the fund's share cancellation practices and their effects on investors to investors both before and during a negative interest rate event. Such disclosures must include (i) advance notification to investors in the fund's prospectus that the fund plans to use share cancellation in a negative interest rate event and the potential effects on investors, and (ii) when the fund is cancelling shares, information in each account statement or in a separate writing accompanying each account statement identifying that such practice is in use and explaining its effects on investors.[362] When disclosing the effects of share cancellation on investors, the fund should include a clear and prominent statement that an investor is losing money when the fund cancels the investor's shares. The fund generally should also clearly and concisely describe tax effects for shareholders.

With respect to prospectus disclosure, this disclosure must be provided before a fund begins to use share cancellation and generally should be provided with sufficient advance notice to allow an investor to take into account information about the fund's possible use of share cancellation and the effects of that approach in the investor's investment decisions. If the board's determination allowing the fund to use share cancellation occurs during a time when a negative interest rate environment does not appear to be reasonably likely to occur in the near future, the fund may include the required disclosures in any relevant part of the fund's prospectus. However, if a negative interest rate environment appears to be reasonably likely to occur in the near future, the fund must include disclosures about its possible use of share cancellation and the effects of share cancellation on investors in the summary prospectus, as share cancellation would be a component of the fund's principal investment strategies or principal risks when a fund is reasonably likely to use share cancellation in the near future.[363] If a fund modifies its summary prospectus to disclose the reasonable likelihood of cancelling shares, or to disclose that the fund has begun to use share cancellation, then the fund also will be required under Item 27A of Form N–1A to report information about this change as a material change in its next annual shareholder report.[364] In addition to providing advance notice in fund prospectuses, funds generally should consider investor education efforts to help investors understand share cancellation and the effects of negative interest rates, as investors may not have ever experienced a negative interest rate event. For example, if negative interest rates are expected to occur in the near term, money market funds should consider additional communications and outreach to educate investors about negative interest rates and their effects on money market fund investments, including the tax effects of RDM share cancellation and tax reporting.

When a fund is using share cancellation, the final rule requires disclosure in the account statement or a separate writing accompanying the account statement, because we believe the account statement is where the shareholder will see the direct effects of share cancellation on the shareholder's investment. Specifically, if a fund implements share cancellation, the account statement would show the reduction in the number of shares the investor holds and the investor's reduced account balance. Funds generally will need to work with their distribution networks to make sure that share cancellation is disclosed clearly and explained in plain English in the account statement or a separate writing accompanying the account statement. This may include, for example, showing the share cancellation as a separate transaction and explaining that the shareholder is losing money on its money market fund investment because of negative interest rates.

Using share cancellation also will have an effect on the fund's financial disclosures. For example, a fund's statements of changes in net assets must include information about the total distributions to shareholders coming from different sources.[365] Under the requirements for disclosing the total distributions to shareholders in 17 CFR 210.6–09, negative distributions attributable to RDM would be ''other sources'' of distributions. Funds generally should disclose negative distributions attributable to RDM separately from any other sources of distributions to shareholders in the statement of changes in net assets. Separate disclosure of negative distributions in the statement will help investors understand the effect of share cancellation. Separately, as discussed below, the final amendments will require stable NAV funds to report on Form N–MFP when they use share cancellation.[366]

If a fund begins to use share cancellation, it also should consider effects on other information it provides and evaluate whether that information continues to present an accurate picture of the fund. For example, when calculating and providing the fund's market-based NAV per share, the fund generally should use the number of shares outstanding it would have but for its use of share cancellation. We generally do not believe that it would be appropriate to use the actual number of shares outstanding the fund has under these circumstances because share cancellation would have the effect of inflating the fund's market-based NAV per share. That is, assuming two funds have the same portfolios with the same market-based value, if one fund used share cancellation and the other fund used a floating NAV, the fund using share cancellation would appear to have a higher market-based NAV per share because it would divide the market-based value across a smaller number of shares than the fund using a floating NAV.

Taken together, these disclosures are intended to help the shareholder understand how the value of its investment is declining and to facilitate

[361] *See* amended rule 2a–7(j).

[362] *See* amended rule 2a–7(c)(3)(iv).

[363] *See* Item 4 of Form N–1A. Depending on when a fund believes that negative rates may be reasonably likely to occur relative to the fund's annual prospectus update, a fund may ''sticker'' its summary prospectus to provide this information. *See* 17 CFR 230.497.

[364] *See* Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Investment Company Act Release No. 34731 (Oct. 26, 2022) [87 FR 72758 (Nov. 25, 2022)], at section II.A.2.f (''Tailored Shareholder Reports Adopting Release''); Item 27A(g) of Form N–1A, as amended by the Tailored Shareholder Reports Adopting Release. The compliance date for the tailored shareholder report requirements ends 18 months after the effective date of Jan. 24, 2023. Until the end of that compliance period, funds will not be required to report material changes in their annual shareholder reports.

[365] *See* 17 CFR 210.6–09 (rule 6–09 of Regulation S–X).

[366] *See infra* section II.F.2.a.

Commission monitoring of how stable NAV money market funds address negative interest rates. On balance, we believe investors would benefit from the ability to continue to invest in stable NAV funds during a negative interest rate environment, and that effective disclosure prior to and during the use of an RDM will help investors understand why and how their investment is losing value.

While this discussion focuses on investor disclosures related to share cancellation, a stable NAV fund that plans to convert to a floating NAV if it has negative gross yield due to negative interest rates generally should consider similar prospectus, shareholder report, and account statement disclosures, as applicable, given investors' lack of experience with negative interest rates and potential expectation that the fund will continue to maintain a stable NAV.

In addition to the proposed RDM prohibition, the Commission proposed to require stable NAV funds to determine that each financial intermediary in the fund's distribution network has the capacity to redeem and sell the fund's shares at non-stable prices or, if this determination cannot be made, to prohibit the relevant intermediary from purchasing the fund's shares in nominee name.[367] After considering comments, and given that we are permitting a stable NAV fund to use RDM under specified conditions in the final rule, we are not adopting this aspect of the proposal. However, we are providing the guidance below to address how funds and financial intermediaries generally should prepare for the possibility of a stable NAV fund's conversion to a floating NAV fund.

Several commenters expressed concerns with the potential burdens and costs of implementing the proposed requirement for government and retail money market funds to determine each financial intermediary's capacity to redeem and sell securities issued by a fund at a floating NAV per share or prohibit the financial intermediary from purchasing the fund's shares in nominee name.[368] Some of these commenters stated that this proposed requirement would be especially burdensome for financial intermediary platforms that operate cash sweep programs and bank-like services under a ''dollar in, dollar out'' infrastructure that does not accommodate a floating share price.[369] These commenters stated that such platforms may be unwilling to bear such burdens and costs and thus may no longer offer government and retail money market funds to their customers, with potentially adverse effects on the economy. Several commenters also suggested that imposing this requirement on government and retail money market funds is misplaced, given that such funds did not experience the same large redemption pressures in March 2020 as public institutional prime and institutional tax-exempt funds.[370] Some commenters stated that the proposed determination or certification requirement is not an appropriate role for fund providers.[371] One commenter who agreed with the need for the proposed determination requirement suggested an alternative approach in which the Commission would act as a repository for such determinations so that individual firms would not have to conduct their own due diligence.[372] Another commenter recommended that the Commission modify this aspect of the proposal to require that financial intermediaries have a reasonably adequate plan or playbook in place for how they would respond to a negative interest rate environment should one arise.[373]

Although the final rule will not require funds to make determinations related to intermediaries' capabilities of transacting at non-stable prices, intermediaries themselves may be subject to separate obligations to investors with regard to the distribution of proceeds received in connection with investments made or assets held on behalf of investors.[374] We also believe that stable NAV money market funds generally should engage with their distribution network in considering how they would handle a negative interest rate environment, as intermediaries' abilities to move to a four-digit NAV and apply a floating NAV or to process share cancellations is an important consideration in determining an approach that is in the best interests of the fund and its shareholders.

More generally, it is important for a stable NAV money market fund to understand the capabilities of its distribution network in the event the fund breaks the buck. To the extent these funds have not already done so, they generally should have a proactive plan or playbook in place for such an event that takes into account how different intermediaries in the fund's distribution network would address a fund's use of a floating NAV (*e.g.,* whether the intermediary has an automated process for processing transactions at a floating NAV or would need to manually process such transactions, as well as the likelihood that an intermediary using a manual approach would move investors to an alternative investment to mitigate the burdens of its manual process). Consistent with the goals of the Commission's proposed amendments, this information would help a fund better prepare for a conversion to a floating NAV and better understand the extent to which some intermediaries may quickly move investors' money out of the fund, which has implications for the fund's redemption risks and liquidity management.[375]

E. Amendments To Specify the Calculation of Weighted Average Maturity and Weighted Average Life

We are adopting amendments as proposed to rule 2a–7 to specify the calculations of ''dollar-weighted average portfolio maturity'' (''WAM'') and ''dollar-weighted average life maturity'' (''WAL'').[376] WAM and WAL are calculations of the average maturities of all securities in a portfolio, weighted by each security's percentage of net assets. These calculations are an important determinant of risk in a portfolio, as a longer WAM and WAL may increase a fund's exposure to interest rate risks. As discussed in the Proposing Release, funds have used different approaches when calculating WAM and WAL under the current definitions in rule 2a–7.[377] We understand that a majority of money market funds calculate WAM and WAL based on the percentage of each security's market value in the portfolio,

[367] *See* proposed rule 2a–7(h)(11)(ii). A stable NAV fund also would have been required to maintain records identifying the intermediaries the fund determined had the capacity to transact at non-stable prices and the intermediaries for which the fund was unable to make this determination. *See* proposed rule 2a–7(h)(11)(iii).

[368] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; Federated Hermes Comment Letter I.

[369] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; Federated Hermes Comment Letter I; Morgan Stanley Comment Letter; BNY Mellon Comment Letter.

[370] *See, e.g.,* ICI Comment Letter; Morgan Stanley Comment Letter.

[371] *See, e.g.,* BlackRock Comment Letter; IIF Comment Letter.

[372] *See* CFA Comment Letter.

[373] *See* Fidelity Comment Letter.

[374] *Cf.* 17 CFR 240.15c3–3 (requiring, among other things, that broker-dealers take certain steps to protect cash they hold for customers). *See also* Gilman v. Merrill Lynch, Pierce, Fenner & Smith, Inc. 404 N.Y.S.2d 258, 262 (N.Y. Sup. Ct. 1978) (holding that after an investment is sold and proceeds belonging to the customer come into the broker's possession, the broker becomes a fiduciary with respect to those proceeds and may not consciously use them to the detriment of the customer and for the broker's own benefit).

[375] *See* Proposing Release, *supra* note 6, at section II.D.

[376] *See* amended rule 2a–7(d)(1)(ii) and (iii).

[377] *See* Proposing Release, *supra* note 6, at section II.E.

while other money market funds base calculations on the amortized cost of each portfolio security. This discrepancy can create inconsistency of WAM and WAL calculations across funds, including in data reported to the Commission and provided on fund websites.[378] Under the amended definitions of WAM and WAL, funds will be required to calculate WAM and WAL based on the percentage of each security's market value in the portfolio.[379]

Commenters were generally supportive of the proposal.[380] However, one commenter disagreed with the proposal, suggesting that the small difference between the WAM and WAL calculated with amortized cost versus market value would not meaningfully impact a fund's WAM and WAL and therefore did not justify the operational burdens for a fund not currently using market values for these calculations.[381] While the difference between a fund's WAM or WAL calculated using amortized cost versus market value is likely to be small in many circumstances, there are also circumstances where this difference may be more significant, such as when a security's issuer experiences a credit event, during periods of market stress, or when interest rates rise rapidly, particularly for assets with longer maturities. Further, these amendments are intended to enhance the consistency of calculations for funds, while allowing the Commission to better monitor and respond to indicators of potential risk and stress in the market. While we recognize that some money market funds may need to implement certain operational changes to comply with the new calculations, a majority of money market funds already calculate WAM and WAL based on the percentage of each security's market value in the portfolio, and all types of money market funds determine the market values of their portfolio holdings for other purposes, which should help limit the extent of operational changes needed. After considering the comments received on the proposal, we are adopting the amendments to the definitions of WAM and WAL as proposed.

F. Amendments to Reporting Requirements

1. Amendments to Form N–CR

We are adopting the amendments to Form N–CR as proposed. In particular, the final amendments add a new requirement for a money market fund to report publicly if it experiences a liquidity threshold event (*i.e.,* the fund has invested less than 25% of its total assets in weekly liquid assets or less than 12.5% of its total assets in daily liquid assets) because such an event represents a significant drop in liquidity of which investors should be aware.[382] We are also adopting all other proposed amendments to Form N–CR, including the structured data requirement, to improve the availability, clarity, and utility of information about money market funds.

a. Reporting of Liquidity Threshold Events

Under the proposal, money market funds would be required to report publicly on Form N–CR when their daily or weekly liquid assets declined by more than 50% below the regulatory minimums. We are adopting this requirement as proposed. Under the final amendments, a fund experiencing a liquidity threshold event is required to report: (1) the initial date on which the fund fell below either the 25% weekly liquid assets or the 12.5% daily liquid assets threshold; (2) the percentage of the fund's total assets invested in both weekly liquid assets and daily liquid assets on the initial date of a liquidity threshold event; and (3) a brief description of the facts and circumstances leading to the liquidity threshold event. A fund will be required to report the amount of both its weekly liquid assets and its daily liquid assets, regardless of whether it has dropped below one or both thresholds, to provide insight into the fund's short-term and immediate liquidity profile. The brief description of facts and circumstances is intended to help better inform investors, the Commission, and our staff of events that lead to significant declines in liquidity.

Commenters had mixed views about whether the reporting of these liquidity threshold events should be made public or filed confidentially with the Commission. Some commenters supported the proposed public reporting requirement.[383] These commenters emphasized the benefits of increased transparency for investors and the Commission. One commenter suggested such public reporting would help inform investors who do not regularly monitor fund liquidity levels on fund websites to understand what is happening with their fund.[384] Another commenter stated that, while there is a possibility investors will redeem in response to a reported liquidity threshold event, the proposed amendments may reduce the likelihood of such redemptions because this report will provide information about why the liquidity decline occurred, thus reducing investor uncertainty.[385]

Commenters requesting confidential reporting to the Commission reasoned that money market funds are currently required to provide information about the size of their daily and weekly liquid assets on a daily basis on their public websites; thus, the commenters suggested the proposed reporting of a liquidity threshold event does not provide investors with information they do not otherwise have. These commenters also suggested that public reporting may heighten investor sensitivity to liquidity levels and affect redemption behavior.[386] One of these commenters expressed concerns that the 12.5% daily liquid asset and 25% weekly liquid asset thresholds for reporting could become new bright lines that contribute to investor redemption behavior and incentivize money fund managers to maintain liquid asset levels above these thresholds, rather than use those assets to meet redemptions. This commenter also suggested that the requirement for a fund to report liquidity threshold events to its board reduces any investor protection or public interest benefits of public reporting.[387]

After considering comments, we continue to believe public reporting when a fund drops more than 50% below a regulatory liquidity minimum is important information for monitoring purposes. Such a significant decrease in liquidity merits prompt disclosure and explanation to investors, the Commission, and our staff. Required public reporting also is consistent with the required public disclosure of daily

[378] *See* Items A.11 and A.12 of current Form N–MFP; 17 CFR 270.2a–7(h)(10)(i)(A).

[379] *See* amended rule 2a–7(d)(1)(ii) and (iii).

[380] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; Capital Group Comment Letter.

[381] *See* Federated Hermes Comment Letter I.

[382] *See* Part E of amended Form N–CR.

[383] *See* CFA Comment Letter; Western Asset Comment Letter; Better Markets Comment Letter.

[384] *See* CFA Comment Letter.

[385] *See* Better Markets Comment Letter.

[386] *See, e.g.,* ICI Comment Letter, Federated Hermes Comment Letter I; Invesco Comment Letter; Schwab Comment Letter; SIFMA AMG Comment Letter; Bancorp Comment Letter.

[387] *See* Dechert Comment Letter (drawing parallels to the Commission's determination not to require public reporting on Form N–PORT if a non-money market fund falls below its highly liquid investment minimum under rule 22e–4, because the Commission considered the presence of board oversight in that determination).

liquidity levels on fund websites.[388] While some commenters suggested a public report is unnecessary because investors already have access to daily liquidity levels on fund websites, these websites do not explain the facts and circumstances surrounding a liquidity threshold event. Investors benefit from having contextual information to understand the cause of the declining liquidity, which is helpful for assessing the fund's risks and its ability to meet redemptions. We also disagree that public reporting is unnecessary because funds must report liquidity threshold events to their boards under the final rule. Board reporting does not improve transparency for investors around the occurrence and causes of liquidity threshold events. Moreover, in response to some commenters' suggestion that such reporting might incentivize redemptions, we cannot predict individual shareholder actions with certainty, but if such redemptions were to occur, the final rule will provide information about why the liquidity decline occurred, thus reducing investor uncertainty. In addition, the final rule provides fund managers with liquidity fees as a tool for managing these redemptions. Further, while we appreciate the concern that such a reporting requirement might encourage money market fund managers to use assets other than daily or weekly liquid assets to meet redemptions to avoid a drop in liquidity that would trigger the reporting requirement, we do not believe such a requirement will contribute significantly to such an incentive because funds are already required to provide daily liquidity levels on their websites. As a result of these considerations, as proposed, the final amendments will require a fund to report the occurrence of a liquidity threshold event publicly on Form N–CR.

With respect to the type of liquidity threshold event a fund must report on Form N–CR, one commenter suggested requiring a fund to report only if it is 50% below each of the daily and weekly liquidity minimums for five consecutive days, but did not offer a supporting rationale.[389] We continue to believe that dropping 50% below a minimum liquidity requirement is a significant event that merits reporting on Form N–CR to help investors, the Commission, and its staff monitor significant declines in liquidity, even if the drop in liquidity is not a protracted event.[390] Expanding the number of days a fund must be 50% below a regulatory liquidity minimum before it is required to report would reduce the intended transparency and utility of the reports on Form N–CR.

We are also adopting the same informational requirements as proposed for these reports. Commenters generally did not discuss the proposed informational requirements, except one commenter expressed support for the general approach.[391] This commenter expressed support for requiring a fund to report both its daily and weekly liquid asset levels when a liquidity threshold event occurs (even if only one threshold is crossed) and with requiring disclosure about the basis for the liquidity threshold event.

Consistent with current timing requirements and with the proposal, a fund will have to file a report within one business day after occurrence of a liquidity threshold event; however, a fund may file an amended report providing the required brief description of the facts and circumstances leading to the liquidity threshold event up to four business days after such event. Commenters did not suggest any changes to the proposed timeframe for filing reports on Form N–CR. If a fund has daily liquid assets or weekly liquid assets continuously below the relevant threshold for consecutive business days after reporting an initial liquidity threshold event, as proposed, the final amendments will only require the fund to report the initial date of the liquidity threshold event, and will not require additional Form N–CR reports to disclose that the same type of liquidity threshold event continues.[392] One commenter discussed this approach and agreed with it.[393] Further, as proposed, an additional report will be required if, for example, a fund initially drops below 25% weekly liquid assets and then on a subsequent day drops below 12.5% daily liquid assets.[394]

b. Structured Data Requirement

As proposed, the final rule will require money market funds to file reports on Form N–CR in a custom eXtensible Markup Language (''XML'')-based structured data language created specifically for reports on Form N–CR (''N–CR-specific XML'').[395] The few comments the Commission received on this topic were mixed.[396] In support, one commenter regarded it as a reporting enhancement that would increase transparency for institutional and retail investors, and allow regulators and policymakers to better assess the state of the financial system.[397] In opposition, one commenter suggested that structured data is more expensive and not used by investors.[398]

After considering commenters' views, we are adopting the structured data requirement as proposed. While we acknowledge that Form N–CR filers may bear some additional reporting costs as a result of this amendment, as one commenter suggested, we believe these costs will generally be related to funds adjusting their systems to a different data language.[399] We continue to believe that use of an N–CR-specific XML language may result in reduced reporting costs by introducing additional efficiencies for funds already accustomed to using structured data for other required reports and may reduce overall reporting costs in the longer term.[400] The structured data requirement will provide more useful data for investors and the Commission, as applicable, because it will allow tools to be developed for sorting and filtering the available data according to specified parameters to enhance comparative assessments and customized analyses.

c. Other Amendments

We also are adopting the following amendments to Form N–CR as proposed: (1) require the registrant name, series name, and legal entity identifiers (''LEIs'') for the registrant and the series to improve identifying

[388] 17 CFR 270.2a–7(h)(10)(ii)(A) and (B).

[389] *See* Federated Hermes Comment Letter I.

[390] *See* Proposing Release, *supra* note 6, at section II.F.1.a.

[391] *See* Federated Hermes Comment Letter I.

[392] *See* Items E.1 and E.2 of amended Form N–CR; *see also* Proposing Release, *supra* note 6, at section II.F.1.a.

[393] *See* Federated Hermes Comment Letter I.

[394] As discussed in the Proposing Release, if a fund initially falls below only one threshold and then subsequently falls below the other threshold, the final amendments will require a second Form N–CR report. For example, if a fund dropped below 25% weekly liquid assets on Tuesday and dropped below 12.5% daily liquid assets on Thursday, it would be required to file two separate reports to disclose each liquidity threshold event. Additionally, if a fund fell below either threshold and subsequently resolved the liquidity threshold event before an initial or amended report is filed, the fund would still be required to report the liquidity threshold event and the facts and circumstances leading to the liquidity threshold event. *See* Proposing Release, *supra* note 6, at n.261.

[395] *See* General Instruction D of amended Form N–CR.

[396] *See* Western Asset Comment Letter; Federated Hermes Comment Letter I.

[397] *See* Western Asset Comment Letter.

[398] *See* Federated Hermes Comment Letter I.

[399] *Id.*

[400] As discussed in the Proposing Release, money market funds already have experience with a custom XML language with respect to their reports on Form N–MFP. In addition, we understand that when money market funds prepare reports in HTML or ASCII (as currently required for Form N–CR reports), they generally need to reformat required information from the way that information is stored for normal business purposes. *See* Proposing Release, *supra* note 6, at section II.F.1.b.

information on the form;[401] (2) add definitions of LEI, registrant, and series to Form N–CR for clarity and consistency with the same defined terms on Form N–MFP;[402] (3) remove the reporting events that relate to liquidity fees and redemption gates, as money market funds will no longer be permitted to impose redemption gates under rule 2a–7, and other disclosure about the imposition of liquidity fees is more appropriate than Form N–CR disclosure under the final rule's amended liquidity fee framework;[403] and (4) amend Part C of Form N–CR, which relates to the provision of financial support to the fund.[404] Specifically, when such support involves the purchase of a security from the fund, the final rule, as proposed, will require reporting of the date the fund acquired the security, which will allow better identification of, and context for, support that occurs within a short period of time. For example, if the fund purchased the security a few days before the affiliate acquired it, this could suggest that the risk profile of the security deteriorated rapidly. One commenter stated that we should not adopt these proposed reporting amendments but did not provide a rationale.[405] Accordingly, we are adopting such amendments to realize their intended benefits.

2. Amendments to Form N–MFP

a. New Information Requirements

We are adopting, with the modifications discussed below, the reporting requirements regarding additional information about the composition and concentration of money market fund shareholders and about prime funds' sales of non-maturing investments. In addition, similar to the proposed requirement to report information about the use of swing pricing, we are requiring funds to report information about their application of liquidity fees under the final rule. Further, because the final rule will permit stable NAV funds to use share cancellation in a negative interest rate environment, we are requiring reporting related to share cancellation.

Shareholder Concentration

In a change from the proposal, after considering comments raising privacy and related concerns, we will not require money market funds to disclose the name of each person who is known by the fund to own beneficially or of record 5% or more of the shares outstanding in the relevant class.[406] Rather, the final rule requires money market funds to report only the *type* of beneficial or record owner who owns 5% or more of the shares outstanding in the relevant class. Accordingly, amended Form N–MFP includes the following categories of owner types from which filers will make the appropriate selection: retail investor; non-financial corporation; pension plan; non-profit; state or municipal government entity (excluding governmental pension plans); registered investment company; private fund; depository institution or other banking institution; sovereign wealth fund; broker-dealer; insurance company; and other.[407] The shareholder concentration information the final amendments require will provide the Commission and investors with a greater ability to monitor redemption and liquidity risks.

As proposed, the final amendments require funds to use a 5% ownership threshold for the shareholder concentration reporting requirement. Commenters generally did not engage substantively on the proposed 5% ownership threshold, though one commenter did agree that 5% would be an appropriate threshold.[408] Funds currently provide similar ownership information using a 5% threshold on an annual basis in their registration statements.[409] More frequent reporting of information on Form N–MFP is designed to facilitate monitoring of a fund's potential risk of redemptions by an individual or a small group of investors that could significantly affect the fund's liquidity.

As proposed, to address circumstances in which multiple investors would be represented as a single shareholder of record as a result of omnibus accounts, the final amendments require funds to report beneficial owner information only to the extent that such beneficial ownership is known to the fund.[410] Commenters did not address this aspect of the proposal. We recognize that funds may not have information about the type of beneficial owner or amount each beneficial owner holds in an omnibus account. The reporting item distinguishes between the percent of shares outstanding owned of record and owned beneficially to facilitate a more nuanced understanding of potential concentration levels.

Some commenters objected to the proposal that funds must publicly disclose the names of specific investors on the basis that the information is private and confidential.[411] For instance, one commenter suggested that disclosure of investor names would be anti-competitive and give other fund sponsors a window into shareholder composition of money market funds.[412] Another commenter suggested such reporting may cause investors to adjust holdings as of month end to avoid public disclosure of their money market fund holdings and drive redemptions.[413] To address these concerns, some commenters suggested that the information should only be reported to the Commission on a confidential basis, particularly given the frequency of the reporting.[414]

Some commenters suggested that shareholder concentration information is of little value and would be burdensome for money market funds to report on a monthly basis. For example, some commenters questioned the usefulness, both to the Commission and investors, of shareholder concentration information.[415] Other commenters

[401] *See* Items A.2, A.4, A.5, and A.7 of amended Form N–CR.

[402] *See* General Instruction F of amended Form N–CR.

[403] *See* Parts E through G of current Form N–CR.

[404] *See* Item C.6 of amended Form N–CR.

[405] *See* Federated Hermes Comment Letter I.

[406] *See* Item B.10 of amended Form N–MFP. If the fund knows that two or more beneficial owners of the class are affiliated with each other, the fund would treat them as a single beneficial owner when calculating the percentage ownership and identify separately each affiliated beneficial owner by type and the percentage interest of each affiliated beneficial owner. For these purposes, an affiliated beneficial owner would be one that directly or indirectly controls or is controlled by another beneficial owner or is under common control with another beneficial owner.

[407] *See* Item B.10.b of amended Form N–MFP. This list of investor types is consistent with the types of investors identified in the proposed and final reporting item on shareholder composition of institutional prime and institutional tax-exempt funds, except the beneficial owner list includes retail investors because the requirement to report investor concentration is not limited to institutional money market funds.

[408] *See* Federated Hermes Comment Letter I.

[409] *See* Item 18 of Form N–1A.

[410] Omnibus accounts are accounts established by intermediaries that typically aggregate all customer activity and holdings in a money market fund, which can result in the fund not having information about individual beneficial owners who hold their shares through the omnibus account.

[411] *See, e.g.,* CFA Comment Letter; Federated Hermes Comment Letter I; Invesco Comment Letter; Dechert Comment Letter (expressing concern that investors, particularly natural persons, would be at risk of having their investments tracked or monitored throughout the year); Schwab Comment Letter; ICI Comment Letter; Bancorp Comment Letter; SIFMA AMG Comment Letter; Northern Trust Comment Letter; CCMR Comment Letter.

[412] *See* Invesco Comment Letter.

[413] *See* Northern Trust Comment Letter.

[414] *See, e.g.,* Federated Hermes Comment Letter I; Invesco Comment Letter; Dechert Comment Letter (stating that more frequent reporting raises privacy concerns, as contrasted with the 30-day lag for reporting similar information on Form N–1A); BlackRock Comment Letter; Schwab Comment Letter; ICI Comment Letter; Bancorp Comment Letter; Northern Trust Comment Letter.

[415] *See* Invesco Comment Letter (stating that it was unlikely that the requirement for money market

questioned the value of requiring reporting of investor names relative to the burden on money market funds.[416] One commenter suggested that intermediary omnibus accounts and the use of nominee names may cause confusion and interpretive issues since interpretation of the data may be subjective and potentially inaccurate.[417] This commenter also suggested that investors lack sufficient information to assess the risks of single shareholder positions. Another commenter suggested that disclosure of shareholders that own 5% or more of shares is not necessary because daily flow information is available on fund websites and provides investors with sufficient information to monitor redemption risk.[418]

Upon consideration of the comments, the amended rule will not require funds to report the names of the greater than 5% owners. Although shareholder concentration information is already reported publicly by funds on an annual basis on Form N–1A, we recognize the sensitivities associated with publicly reporting the names of owners with ownership of more than 5% on a monthly basis. Accordingly, the amendments instead require funds to provide information about the types of owners who invest 5% or more in a class of the fund. This amendment addresses commenters' concerns while maintaining the value of the reported information in monitoring a fund's potential risk of redemptions by an individual or a small group of investors that could significantly affect the fund's liquidity. We decline to make shareholder concentration information confidential, as some commenters suggested, because confidential reporting would deprive investors of the increased ability to monitor redemption and liquidity risk. In addition, as proposed, the burden of the reporting requirement is limited because funds need only report beneficial ownership information to the extent known by the fund.

In response to comments questioning the value of shareholder concentration information, we believe that more frequent information about shareholder concentration will assist both the Commission and investors in monitoring a fund's potential risk of redemptions. In particular, investors can identify shareholder concentrations that may significantly affect the fund's liquidity. While we recognize investors have access to information about a fund's historical flows and liquidity levels, this information may not present the full picture of the risks of a single shareholder redeeming a large position in the fund's shares. Investors will benefit from additional information that allows them to more efficiently monitor and assess liquidity risk. The shareholder concentration reporting requirement will provide an additional useful metric when undertaking liquidity risk analyses, making the form (and its data) more usable by filers, regulators, and investors when evaluating potential redemption behavior and related investor risks.

Some commenters proposed alternative reporting methodologies for shareholder concentration. Some commenters suggested that funds should only be required to report the number of investors with ownership at or above a 5% threshold.[419] Another commenter suggested that funds should report, without attribution, the percentage holdings and type of the top 5 largest investors.[420] Reporting only the number of investors above the 5% ownership threshold or only the percentage holdings of the top 5 largest investors would limit the utility of Form N–MFP in monitoring for redemption and liquidity risk. The approach we are adopting is designed to provide a more comprehensive overview of a fund's shareholder concentration and, accordingly, facilitate a more incisive risk analysis. In addition, this approach aligns with the analysis funds already must conduct annually when updating their registration statements.

With respect to the proposed requirement to report the number of investors who own of record or beneficially 5% or more, several commenters suggested that it would be difficult for funds to report the necessary ownership information given omnibus positions. Some commenters suggested amendments to require financial intermediaries to provide certain information to money market funds.[421] As proposed, funds must report beneficial ownership information only to the extent known by the fund. We recognize that money market funds may not have information about all beneficial owners. We agree with commenters that information about shareholder concentration can help funds manage liquidity and improve stress testing. As such, a fund could consider periodically requesting information from intermediaries about shareholder concentration.

One commenter suggested that shareholder concentration should be reported monthly at the fund level, not the share class level.[422] Reporting this information at the share class level provides a more comprehensive view of a fund's overall shareholder concentration and a better understanding of the group of investors that could impact the fund's liquidity. This is particularly relevant in times of stress because the required concentration information is more specific and corresponds to the share class flow level reporting on Form N–MFP. Fund level reporting may still be of value, and the Commission and investors can use the data reported at the class level to then analyze concentration at the fund level if needed. Reporting at the share class level is also appropriate because money market fund shares are sold on a class level and, in addition, such reporting is consistent with the current reporting of shareholder concentration on Form N–1A. Reporting at the share class level also provides insight into customized share classes, which may have unique shareholder compositions for which monitoring at the class level may be particularly important from a liquidity risk perspective.

Shareholder Composition

We are adopting, as proposed, amendments requiring a money market

funds to disclose shareholder concentration levels regularly would produce standardized cross industry data that could be used in a meaningful manner); ICI Comment Letter; SIFMA AMG Comment Letter; *see also* Western Asset Comment Letter.

[416] *See* BlackRock Comment Letter; *see also* CCMR Comment Letter (noting general compliance costs and the burden to funds); Western Asset Comment Letter.

[417] *See* Western Asset Comment Letter.

[418] *See* Northern Trust Comment Letter.

[419] *See, e.g.,* Federated Hermes Comment Letter I (suggesting that funds should only report the number of investors that own of record or beneficially 5% or more, distinguishing between record owners and beneficial owners); SIFMA AMG Comment Letter (suggesting that funds disclose the number of investors owning 5% or more of the shares outstanding of a class of a fund).

[420] *See* BlackRock Comment Letter.

[421] *See* Federated Hermes Comment Letter I (suggesting that rule 22c–2(a)(2) be amended to require money market funds to enter into agreements with intermediaries to obtain the needed shareholder information); Morgan Stanley Comment Letter (''SEC should consider requiring financial intermediaries holding omnibus positions to provide data periodically and consistently to money market funds regarding the ten largest underlying clients (excluding identities) to assist money market funds in managing liquidity.''); BlackRock Comment Letter (''The Commission could assess whether requiring some transparency, such as anonymized flows by client type, could benefit stress testing and liquidity management.'').

[422] *See* BlackRock Comment Letter (''[W]e note that the data should be collected monthly at the Fund level and not the share class level. While we understand the SAI currently lists 5% holders at the share class level, we believe that information is provided for a different reason than needing to monitor concentration in a fund.'').

fund that is not a government money market fund or a retail money market fund to provide information about the composition of its shareholders by type.[423] Accordingly, funds must identify the percentage of investors within the following categories: non-financial corporation; pension plan; non-profit; state or municipal government entity (excluding governmental pension plans); registered investment company; private fund; depository institution and other banking institution; sovereign wealth fund; broker-dealer; insurance company; and other. This information is designed to assist with monitoring the liquidity and redemption risks of institutional money market funds, as different types of investors may pose different redemption risks. We are not requiring this information of government money market funds because these funds have lower redemption and liquidity risks than other money market funds. In addition, we are not applying this requirement to retail funds because these funds, by definition, are limited to retail investors.

With respect to the proposal for funds to report shareholder composition by type, one commenter suggested that the categories of investors should align with the current National Securities Clearing Corporation (''NSCC'') social codes, which some industry participants presently use.[424] The NSCC list of social codes includes several dozen distinct designations, which may cause confusion for money market funds completing the disclosures as well as investors reviewing such disclosures. In contrast, our list of general categories better facilitates the disclosure process and provides sufficient detail for Commission staff and investors monitoring liquidity and redemption risk.[425]

Prime Money Market Funds' Selling Activity

We are adopting, as proposed, an amendment to require information about the gross market value of portfolio securities a prime money market fund sold or disposed of during the reporting period.[426] Commenters did not address this aspect of the proposed requirement. This information will facilitate monitoring of prime money market funds' liquidity management, as well as their secondary market activities in normal and stress periods. It also will improve the availability of data about how selling activity by money market funds relates to broader trends in short-term funding markets. A prime fund will be required to disclose the aggregate amount it sold or disposed of for each category of investment.[427] The categories of investments mirror the categories funds already use on Form N–MFP for identifying their month-end holdings (*e.g.,* certificate of deposit, non-negotiable time deposit, financial or non-financial company commercial paper, or U.S. Treasury debt).[428] To focus the disclosure on secondary market activity, as proposed, portfolio securities held by a fund until maturity are excluded from the disclosure. We are requiring only prime funds to provide information about securities sold or disposed of because asset liquidation by this type of money market fund contributed to the market stress in March 2020 and during the 2008 financial crisis. In contrast, government funds generally receive inflows during periods of market stress and tend to provide liquidity to the market by investing incoming cash flow in the repurchase agreement market and purchasing securities. Tax-exempt funds are only a small segment of the money market fund industry and are less likely to generate significant liquidity concerns for the broader municipal market.

Liquidity Fees

Consistent with the changes described above in the liquidity fee mechanism section, and in a change from the proposal, we are amending Form N–MFP to require money market funds to report the date on which the liquidity fee was applied, the type of liquidity fee, and the amount of the liquidity fee applied by the fund.[429] In addition, we are removing existing reporting requirements on Form N–CR related to the application of liquidity fees because we believe monthly reporting of the frequency, type, and size of liquidity fees on Form N–MFP is more consistent with the modified liquidity fee framework we are adopting than requiring current reporting on Form N–CR.

Share Cancellation

Because the final rule permits stable NAV funds to use share cancellation when interest rates and the fund's gross yield are negative, subject to certain conditions, the final amendments will require a stable NAV fund to report information about its use of share cancellation on Form N–MFP. Specifically, the amendments require a fund to report if it used share cancellation during the reporting period and, if so, the dollar value of shares cancelled, the number of shares cancelled, and the dates on which it used share cancellation.[430] This reporting will help the Commission and investors monitor a fund's implementation of RDM share cancellation under final rule 2a–7. Under the proposed rule, the Commission did not need to require separate reporting of a fund's conversion to a floating NAV in response to a negative interest rate event, because investors and the Commission can currently observe such conversion through the fund's reported daily NAVs on Form N–MFP. Given that the final rule will permit the use of RDM share cancellation if a fund meets the rule's conditions, separate reporting of its implementation is important to allow the Commission and investors to assess how all stable NAV funds address negative interest rates.

b. Changes To Improve the Accuracy and Consistency of Currently Reported Information

We are adopting, with the modifications discussed below, several amendments to the information currently reported on Form N–MFP about money market funds and their portfolio securities, including repurchase agreements. These amendments are designed to, among other things, improve the accuracy and consistency of such information reported on Form N–MFP. However, in response to comments, we are not adopting the full scope of the amendments we proposed such as requirements for lot-level reporting of portfolio holdings and disaggregated information for certain repurchase agreement reporting.

[423] *See* Item B.11 of amended Form N–MFP.

[424] *See* Invesco Comment Letter.

[425] The categories we are adopting have some overlap with the types of beneficial owners that large liquidity fund advisers and other private fund advisers that report on Form PF use for purposes of that form. *See* Question 16, Item B, Section 1b of Form PF. As a result, there may be certain efficiencies for money market funds with advisers to liquidity funds or other private funds.

[426] *See* Part D of amended Form N–MFP. The proposed amendment referred to the ''amount'' of portfolio securities. We are changing the terminology to ''gross market value'' in the final amendments to clarify that a fund may not net its purchases and sales for purposes of this reporting item. This clarification is consistent with language in the Proposing Release referring to the ''aggregate'' amount a fund sold or disposed of. *See* Proposing Release, *supra* note 6, at text accompanying n.274.

[427] *See* Item D.1 of amended Form N–MFP. Thus, if a prime money market fund sold an instrument and then bought it back during the reporting period, the fund should include the market value of that sale in the reported gross market value of portfolio securities sold during the reporting period.

[428] *See* Item C.6 of current Form N–MFP.

[429] *See* Item A.22 of amended Form N–MFP.

[430] *See* Item B.12 of amended Form N–MFP.

We are adopting amendments that will require additional information about repurchase agreement transactions and standardize how filers report certain information. Specifically, the final amendments will require, as proposed, that filers identify (1) the name of the counterparty in a repurchase agreement;[431] (2) whether a repurchase agreement is centrally cleared and the name of the central clearing counterparty, if applicable;[432] (3) if a repurchase agreement was settled on a triparty platform;[433] and (4) the CUSIP of the securities involved in the repurchase agreement.[434] As proposed, the final amendments will also include ''cash'' as a category of investment that most closely represents the collateral in repurchase agreements.[435] However, in a change from the proposal, we are not adopting the amendments to remove the ability of funds to aggregate certain required information if multiple securities of an issuer are subject to the repurchase agreement.

Several commenters disagreed with the proposed removal of the ability of money market funds to aggregate certain required information on Form N–MFP if multiple securities of an issuer are subject to a repurchase agreement.[436] These commenters suggested that the additional reporting in a disaggregated format would impose significant additional operational burdens for funds and that these burdens are not justified by any benefit to the Commission or investors of the additional information.[437] For example, one commenter explained that a money market fund can enter into a single repurchase agreement that may cover over one hundred unique CUSIPs, and it would require significant time to prepare and review this data for reporting on Form N–MFP.[438]

As discussed in the Proposing Release, the proposal to require disaggregated information for repurchase agreements was designed to provide more complete information about securities subject to a repurchase agreement.[439] This would assist the Commission's ability to analyze and compare information regarding repurchase agreements on Form N–MFP. The other amendments we are adopting will improve the reported information about repurchase agreements and allow for improved Commission monitoring.[440] In light of the potential challenges of reporting disaggregated information within five business days of month-end at this time, and considering the benefits of the other information about repurchase agreements we are requiring, we are not requiring funds to report disaggregated information about securities subject to a repurchase agreement at this time. Accordingly, under the final amendments, money market funds will continue to be permitted to aggregate certain required information regarding repurchase agreements under certain conditions.

With respect to other repurchase agreement-related amendments, one commenter argued that the proposed reporting of additional information about the counterparty to the repurchase agreement, whether a repurchase agreement is centrally cleared or a triparty agreement, and the CUSIP of collateral subject to the repurchase agreement are not appropriate given the costs involved to provide such information and the limited utility in doing so.[441] Another commenter supported the proposed requirement to report the CUSIP of collateral subject to repurchase agreements.[442] This commenter further suggested that money market fund managers would not incur substantial additional costs or burdens with respect to reporting CUSIP identifiers of repurchase agreement collateral because such managers more likely than not already rely on the CUSIP reference data to assemble their funds' portfolios. We do not agree with the assertion that the costs are not justified given the potential benefits from requiring this information. As discussed in the Proposing Release, requiring the name of the counterparty and indicating whether a repurchase agreement is centrally cleared will clarify how funds should report this information on the form, as funds currently report varying information about repurchase agreements in response to an item that currently requires the name of the issuer.[443] Moreover, the amendments recognize changes that have occurred in the repurchase agreement market since the form was last amended, such as the introduction of centrally cleared (or ''sponsored'') repurchase agreements. Requiring this additional information is intended to improve data clarity regarding repurchase arrangements and assist us in monitoring money market fund activity in various segments of the market for repurchase agreements, including potentially increased or decreased activity during periods of market stress, which may affect availability of funding for borrowers.

Our proposed amendments to Form N–MFP also included amendments to specify that, for purposes of reporting a fund's schedule of portfolio securities in Part C of Form N–MFP, filers would be required to provide information separately for the initial acquisition of a security and any subsequent acquisitions of the security (*i.e.,* lot-level reporting).[444] Requiring funds to report information separately for each lot, including the trade date on which the security was acquired and the yield of the security as of that trade date, could assist the Commission in understanding how long a fund has held a given position and the maturity of the position when it was first acquired.[445]

Several commenters disagreed with this aspect of the proposal.[446] These commenters expressed concern that public lot-level reporting could reveal trading strategies to predatory traders, and thus should be kept confidential if the Commission requires this information. One commenter did not believe this aspect of the proposal is appropriate given the costs involved to provide such information and the limited utility of the information for the Commission.[447] Another commenter expressed support for the proposed portfolio securities reporting requirement, but suggested that the Commission periodically evaluate whether any reporting continues to meet policy objectives and remains useful.[448]

After considering these comments, we understand the concern that requiring public lot-level reporting and trade date information may subject filers to the risk

[431] *See* Item C.1 of amended Form N–MFP.

[432] *See* Item C.8.b. of amended Form N–MFP.

[433] *See* Item C.8.c. of amended Form N–MFP.

[434] *See* Item C.8.f of amended Form N–MFP.

[435] As discussed in the Proposing Release, adding a ''cash'' category is designed to recognize that cash is sometimes used as collateral for repurchase agreements. We expect that this addition will reduce inaccurate disclosure suggesting that a repurchase agreement is under-collateralized. *See* Proposing Release, *supra* note 6, at paragraph accompanying n.278; Item C.8.k of amended Form N–MFP.

[436] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; BlackRock Comment Letter; CCMR Comment Letter.

[437] *Id.*

[438] *See* BlackRock Comment Letter.

[439] *See* Proposing Release, *supra* note 6, at section II.F.2.

[440] *See* Item C.1 and C.8 of amended Form N–MFP.

[441] *See* Federated Hermes Comment Letter I.

[442] *See* Comment Letter of American Bankers Association (Apr. 11, 2022) (''ABA Comment Letter II'') (letter focusing on security identifiers).

[443] *See* Proposing Release, *supra* note 6, at section II.F.2.

[444] *See* Proposing Release, *supra* note 6, at section II.C.2.b.

[445] *See* proposed Item C.6 of Form N–MFP.

[446] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; BlackRock Comment Letter; CCMR Comment Letter.

[447] *See* Federated Hermes Comment Letter I.

[448] *See* Western Asset Comment Letter.

that predatory traders and other bad actors may seek to misuse this information. While we continue to believe such information could, among other things, help facilitate the Commission's understanding of money market fund portfolio turnover during normal and stressed market condition, we are also adopting other amendments to Form N–MFP that will help facilitate the Commission's understanding in this area, including new Part D to Form N–MFP, which includes information on prime money market fund portfolio securities sold or disposed of during the reporting period, and more frequent data reporting of daily liquidity, net asset value, and flow data.[449] In light of the potential risks identified by commenters coupled with the other amendments to Form N–MFP that we are adopting, we are not requiring public lot-level reporting at this time. Under the final amendments, filers will continue to be permitted but are not required to report information separately for each lot.

We are also adopting, as proposed, certain amendments to Form N–MFP that are intended to make it easier and more efficient to understand information reported on the form. Under current Form N–MFP, filers are required to indicate the category of the money market fund, choosing among categories such as ''Treasury,'' ''Government/Agency,'' and ''Exempt Government,'' among others. We understand that these categories for government money market funds have contributed to confusion and inconsistent approaches to reporting.[450] Accordingly, we proposed to replace these three categories with a single ''Government Category'' and include a new subsection that requires government money market funds to indicate whether they typically invest at least 80% of the value of their assets in U.S. Treasury obligations or repurchase agreements collateralized by U.S. Treasury obligations.[451] These proposed amendments were designed to provide more clarity for filers and supply the Commission with more accurate identification of different types of government money market funds.

Commenters generally did not discuss this specific aspect of the proposal, but the one commenter who addressed this aspect of the proposal supported it.[452] This commenter stated that the proposed amendments would reduce confusion and inconsistency in categorizing government money market funds. This commenter also supported the proposed addition of a new subsection to identify money market funds that invest in Treasury obligations, either directly or through repurchase agreements. We agree and are adopting the amendments as proposed to money market fund categorization.[453]

We are also adopting as proposed a new item in Form N–MFP that would require filers to indicate whether the fund is established as a cash management vehicle for affiliated funds and accounts.[454] This item is designed to make it easier and more efficient to identify privately offered institutional money market funds. Separately, and as proposed, we are adopting an amendment to the form to require a fund to affirmatively state whether it seeks to maintain a stable price per share, consistent with our proposal.[455] Commenters generally did not discuss these specific proposals, except one commenter agreed that the proposed requirement to require filers to indicate whether the fund is established as a cash management vehicle for affiliates is sufficiently clear.[456]

Under current Form N–MFP, filers are required to indicate the category of each reported portfolio security using a list of categories designated on the form.[457] We are adopting as proposed the amendments to the list of categories to distinguish between U.S. Government agency debt categorized as (1) a coupon-paying note and (2) a no-coupon discount note.[458] This change will assist us in understanding whether an agency security is a weekly liquid asset, as only agency discount notes with less than 60 days to maturity qualify as weekly liquid assets under the rule. In addition, we are adopting as proposed a conforming change to the list of investment categories that a fund must use for purposes of disclosing information about its holdings on its website.[459]

Commenters generally did not discuss these specific amendments, except one commenter expressed support for this aspect of the proposal if the Commission would find this information useful.[460] As discussed above, this amendment will assist us in reviewing reported information.

Further, we are adopting, as proposed, amendments to require money market funds to report only the amount of any fee waiver or expense reimbursement that occurred during the reporting period.[461] Under current Form N–MFP, funds are required to provide the name of any person who paid for or waived all or part of the fund's operating expenses or management fees during the reporting period and describe the amount and nature of the fee and expense waiver or reimbursement.[462] As discussed in the Proposing Release, these disclosures are difficult to use because they are provided in a format that is not structured.[463] In addition, identification of the person who paid for or waived the fund's expenses or fees is not significantly beneficial to the Commission's monitoring and assessment of fund risks, and investors separately have access to information about fee and expense waivers or reimbursements in funds' financial statements. Commenters generally did not discuss these specific proposals, except one commenter agreed that the simplified fee waiver and expense reimbursement reporting is sufficient.[464] Accordingly, for the reasons discussed above and in the proposal, we are adopting these amendments as proposed.

c. More Frequent Data Points

As proposed, we are amending Form N–MFP to require a money market fund to provide in its monthly report certain daily data points to improve the utility of the reported information. Specifically, the amendments require a fund to report its percentage of total assets invested in daily liquid assets and in weekly liquid assets, net asset value per share (including for each class of shares), and shareholder flow data for each business day of the month.[465] Currently, in monthly reports on Form N–MFP, a money market fund must provide the same general information on a weekly basis.[466] Also, under current rule 2a–7, a money market fund must prominently disclose on its website, as of the end of each business day during

[449] *See* Part B and Part D of amended Form N–MFP.

[450] *See* Item A.10 of current Form N–MFP.

[451] *See* Proposing Release, *supra* note 6, at section II.F.2.b.

[452] *See* Federated Hermes Comment Letter I.

[453] *See* Item A.10 of amended Form N–MFP.

[454] *See* Item A.21 of amended Form N–MFP.

[455] *See* Item A.18 of amended Form N–MFP.

[456] *See* Federated Hermes Comment Letter I.

[457] *See* Item C.6 of current Form N–MFP.

[458] *See* Item C.6 of amended Form N–MFP.

[459] *See* amended rule 2a–7(h)(10)(i)(B)(*2*). We are also making modernizing changes to rule 2a–7(h)(10) (*e.g.,* by replacing the term ''website'' with ''website'') and correcting a typographical error in rule 2a–7(h)(10)(iii) that refers to share prices of $1.000 and $10.00 instead of $1.0000 and $10.000.

[460] *See* Federated Hermes Comment Letter I.

[461] *See* Item B.9 of amended Form N–MFP.

[462] *See* Item B.8 of current Form N–MFP.

[463] *See* Proposing Release, *supra* note 6, at section II.F.2.b.

[464] *See* Federated Hermes Comment Letter I.

[465] *See* Items A.13, A.20, B.6, and B.7 of amended Form N–MFP.

[466] *See* Items A.13, A.20, B.5, and B.6 of current Form N–MFP.

the preceding six months, the fund's weekly liquid assets and daily liquid assets, as well as the fund's net asset value and net shareholder flow.[467] The more frequent information on Form N–MFP will allow Commission staff to better and more precisely monitor risks and trends in these areas in an efficient and more precise manner without requiring frequent visits to the websites of many different funds. It also will provide industry-wide daily data in a central repository as a resource for investors and others.[468] The weekly data currently reported on Form N–MFP provides only a snapshot of the liquidity, net asset value, and flow data for any given month, and is therefore incomplete and less useful for purposes of analysis and monitoring than data for each business day in that month. In addition, most of the data on Form N–MFP is reported as of the end of the month, making it difficult to analyze the weekly data in a comprehensive manner. This is because the weekly data points generally relate to different days than the monthly data points. Consistent with the website information funds already provide, the reported daily data points will be calculated as of the end of each business day.

One commenter opposed the proposal to require liquidity, net asset value, and flow data to be reported as of the close of business on each business day of each month on the basis that it would be unduly burdensome and without any added benefit.[469] This commenter suggested instead that the Commission should look to private data resources where such information is readily available. As discussed in the proposal, although private data vendors provide some daily data based on information gathered from funds' websites, the staff has observed this data can be incomplete at times, and therefore may not be appropriate for purposes of staff monitoring and analyses. Also, money market funds generally are already required to provide on their websites the same data that we are requiring be reported on Form N–MFP, and thus we believe this change will impose minimal burden on money market funds.

As proposed, we are also increasing the frequency with which funds report certain yield information. Currently, funds must report 7-day gross yields (at the series level) and 7-day net yields (at the share class level) as of the end of the reporting period. We are amending Form N–MFP to require funds to report this information for each business day.[470] One commenter opposed the proposal to require money market funds to report 7-day yield information on a daily basis, suggesting instead that money market funds should, at most, be required to report 7-day yield information on a weekly basis, though the commenter preferred monthly reporting.[471] This commenter suggested that the requirement would place an undue burden on funds and would fail to add value and enhance funds. The higher-frequency reporting, however, will assist in the timely monitoring and assessment of fund risks, particularly during periods of market stress. The additional burdens associated with these amendments are appropriate and justified by the increased investor protection and other benefits.

d. Other Amendments

As proposed, we are amending how advisers report the identity of fund registrants and series.[472] Under current Form N–MFP, a filer must disclose the registrant's LEI, if available, and the form does not require the LEI of the series.[473] Filers also currently provide the name of the registrant and series in metadata associated with the form, but they do not report these names on the form itself. As adopted, the amended form will require funds to identify the name and LEI for both the fund registrant and the series.[474] Requiring reporting of registrant and series names on the form is intended to make the form easier for investors to use. In addition, the change to require LEIs for the registrant and series will align Form N–MFP with other reporting forms, such as Forms N–CEN and N–PORT, which require LEI reporting for the registrant and series.

We are also adopting as proposed amendments to specify that funds should respond to an item request with ''N/A'' if the information is not applicable (*e.g.,* a company does not have an LEI).[475] The amended definition of LEI in the form removes language providing that, in the case of a financial institution that does not have an assigned LEI, a fund should instead disclose the RSSD ID assigned by the National Information Center of the Board of Governors of the Federal Reserve System, if any.[476] Instead, the amendments add RSSD ID as an additional category of ''other identifiers'' that a fund can use for relevant portfolio securities.[477] These changes are designed to improve consistency and comparability of information funds report about the securities they hold.

Commenters generally did not discuss these specific aspects of the proposal, except one commenter opposed them without offering a supporting reason or explanation.[478] For the reasons discussed above, we are adopting the amendments as proposed.

Separately, some commenters suggested that the Commission should provide funds with more time to file reports on the form because the proposed amendments to Form N–MFP would increase the volume and frequency of reported data points.[479] Currently, money market funds must file reports on Form N–MFP by the fifth business day of each month.[480] Some commenters recommended extending the filing deadline to seven business days after month-end to allow sufficient time for review and verification of the new information.[481] Another commenter recommended an extension of 10 business days following month-end to reduce the risk of error in the submitted data and information to the Commission.[482] For similar reasons, another commenter recommended an additional three business days, resulting in a filing deadline on the eighth business day of the following month.[483] After considering these comments, we are not amending the reporting deadline, and funds will continue to be required to file reports on Form N–MFP by the fifth business day of each month.

As discussed above, we are not adopting the full scope of the

[467] 17 CFR 270.2a–7(h)(10)(ii).

[468] To enhance consistency in reporting practices, filers must report gross subscriptions and gross redemptions as of the trade date (rather than as of the settlement date). This change is designed to ensure that funds are reporting the information in the same manner. Filers that are master-feeder funds must report the required shareholder flow data at the feeder fund level only. *See* Item B.7 of amended Form N–MFP.

[469] *See* Federated Hermes Comment Letter I.

[470] *See* Items A.19 and B.8 of amended Form N–MFP.

[471] *See* Federated Hermes Comment Letter I.

[472] *See* Proposing Release, *supra* note 6, at section II.F.2.d.

[473] *See* Item 3 of current Form N–MFP.

[474] *See* Items 2, 4, 5, and 6 of amended Form N–MFP.

[475] *See* General Instruction A to amended Form N–MFP.

[476] *See* General Instruction E to amended Form N–MFP for a revised definition of LEI.

[477] *See* Item C.5 of amended Form N–MFP.

[478] *See* Federated Hermes Comment Letter I.

[479] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; BlackRock Comment Letter; Federated Hermes Comment Letter I; CCMR Comment Letter; Bancorp Comment Letter; Invesco Comment Letter; Capital Group Comment Letter.

[480] *See* 17 CFR 270.30b1–7; General Instruction A of current Form N–MFP.

[481] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; BlackRock Comment Letter; Federated Hermes Comment Letter I (responding to Question 132); CCMR Comment Letter; Bancorp Comment Letter.

[482] *See* Invesco Comment Letter.

[483] *See* Capital Group Comment Letter.

amendments we proposed. For example, we are not requiring lot-level reporting of portfolio holdings or disaggregated information if multiple securities of an issuer are subject to a repurchase agreement. In addition, several of the amendments will require funds to report daily data points they already publish on their websites, including liquidity levels and net asset values. Considering the more tailored scope of the final amendments and funds' experience collecting the same or similar data in several cases, we believe the current five business day timeline continues to be appropriate and will ensure timely public access to the data. To the extent that a fund identifies an error in its report after the filing deadline, it can file an amendment to correct the error, as currently permitted.[484] In our experience, only a small number of funds needed to make amendments to Form N–MFP filings to correct reporting issues after the deadline.

3. Amendments to Form PF

The Commission is also amending Form PF, the confidential reporting form for certain SEC-registered investment advisers to private funds to require additional information regarding the liquidity funds they advise. Liquidity funds are private funds that seek to maintain a stable NAV (or minimize fluctuations in their NAVs) and thus can resemble money market funds.[485] The amendments to section 3 of Form PF will provide a more complete picture of the short-term financing markets in which liquidity funds invest and enhance the Commission's and the Financial Stability Oversight Council's (''FSOC'') ability to assess short-term financing markets and facilitate our oversight of those markets and their participants.[486] This, in turn, is designed to enhance investor protection efforts and systemic risk assessment.[487] We have consulted with FSOC to gain input on these amendments to help ensure that Form PF continues to provide FSOC with information it can use to assess systemic risk.

In a January 2022 release proposing amendments to Form PF, the Commission proposed changes to section 3 of Form PF that were intended to require large liquidity fund advisers to report substantially the same information that the Commission had proposed money market funds to report on Form N–MFP.[488] The proposed amendments to section 3 of Form PF included requirements for additional and more granular information regarding large liquidity fund operational information and assets, portfolio holdings, financing, and investor information as well as a new item concerning the disposition of portfolio securities.[489] Consistent with the final amendments to Form N–MFP, we are adopting largely as proposed the amendments to section 3 of Form PF, with some modifications to better tailor the reporting to private liquidity funds and remain consistent with the final requirements for money market funds under amended Form N–MFP.

We received limited comments regarding the proposed amendments to section 3 of Form PF.[490] Two commenters were supportive of the changes, with one commenter stating that it was reasonable to require the large liquidity fund advisers to provide comprehensive reports to the SEC on their operations and financial condition.[491] This commenter argued that if a significant difference between the requirements applicable to money market funds and liquidity funds exists, this difference could allow for a significant but hidden risk to develop.[492] In contrast, another commenter argued that the proposed changes to Form PF would represent a fundamental shift from the original intent of Form PF to assist the FSOC in its monitoring obligations and questioned whether additional data was necessary.[493]

We do not agree that the proposed amendments represent a fundamental shift from the original intent of Form PF. The Commission adopted Form PF, as required by the Dodd-Frank Act, to enhance FSOC's monitoring and assessment of systemic risk; to provide information for FSOC's use in determining whether and how to deploy its regulatory tools; and to collect additional data for the Commission's use in its own regulatory program, including examinations, investigations, and investor protection efforts relating to private fund advisers.[494] The final amendments to section 3 of Form PF are designed to provide the Commission and FSOC with a more complete picture of the short-term financing markets in which liquidity funds invest, and in turn, enhance the Commission's and FSOC's ability to assess the potential market and systemic risks presented by liquidity funds' activities and facilitate our oversight of those markets and their participants. Specifically, we believe that the additional and more granular information the final amendments require will enable the Commission and FSOC to better assess liquidity funds' asset turnover, liquidity management and secondary market activities, subscriptions and redemptions, and ownership type and concentration. This information may be used to analyze funds' liquidity and susceptibility to the risk of runs, which may give rise to systemic risk concerns. In addition, the information can be used for identifying trends in the liquidity fund industry during normal market conditions and for assessing deviations that may serve as signals for changes in short-term funding markets. These amendments also are designed to improve data quality and comparability. Together, the

[484] *See* General Instruction A of current Form N–MFP; General Instruction A of amended Form N–MFP.

[485] For purposes of Form PF, a ''liquidity fund'' is any private fund that seeks to generate income by investing in a portfolio of short term obligations in order to maintain a stable net asset value per unit or minimize principal volatility for investors. *See* Form PF: Glossary of Terms.

[486] In addition, the changes will enhance the Commission's and FSOC's ability to assess short-term financing markets, facilitate the Commission's oversight of those markets, and improve the data quality and comparability by making certain categories in section 3 more consistent with the categories the Federal Reserve Board uses in its reports and analysis.

[487] The Commission is adopting these amendments, in part, pursuant to its authority under section 204(b) of the Advisers Act, which gives the Commission the authority to establish certain reporting and recordkeeping requirements for advisers to private funds and provides that the records and reports of any private fund to which an investment adviser registered with the Commission provides investment advice are deemed to be the records and reports of the investment adviser.

[488] *See* Form PF Proposing Release, *supra* note 14; Proposing Release, *supra* note 6, at section II.F.2.

[489] *See* Form PF Proposing Release, *supra* note 14, at section II.C.

[490] *See* Comment Letter of Better Markets on File No. S7–01–22 (Mar. 21, 2022) (''Better Markets Comment Letter on File No. S7–01–22''); Comment Letter from Andres Loubriel on File No. S7–01–22 (Oct. 13, 2022) (''Loubriel Comment Letter on File No. S7–01–22''); Comment Letter of New York City Bar Association on File No. S7–01–22 (Mar. 21, 2022) (''NYC Bar Comment Letter on File No. S7–01–22''). Comment letters on the Form PF Proposing Release (File No. S7–01–22) are available at https://www.sec.gov/comments/s7-01-22/s70122.htm.

[491] *See* Better Markets Comment Letter on File No. S7–01–22; Loubriel Comment Letter on File No. S7–01–22.

[492] *See* Better Markets Comment Letter on File No. S7–01–22.

[493] *See* NYC Bar Comment Letter on File No. S7–01–22.

[494] *See* Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, Investment Advisers Act Release No. 3308 (Oct. 31, 2011) [76 FR 71128 (Nov. 16, 2011)] (''2011 Form PF Adopting Release''), at sections II and V; *see also* Amendments to Form PF to Require Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers and to Amend Reporting Requirements for Large Private Equity Fund Advisers, Advisers Act Release No. 6297 (May 3, 2023) [88 FR 38146 (June 12, 2023)] (''2023 Form PF Adopting Release'').

amendments are intended to enhance investor protection efforts and systemic risk assessment and, further, are consistent with the original intent of Form PF.

Our Form PF amendments apply only to large liquidity fund advisers, which generally are SEC-registered investment advisers that advise at least one liquidity fund and manage, collectively with their related persons, at least $1 billion in combined liquidity fund and money market fund assets.[495] Large liquidity fund advisers today are required to file information on Form PF quarterly, including certain information about each liquidity fund they manage. Under our final amendments, we are amending the reporting requirements for section 3 of Form PF as follows:

- *Operational Information.* We are adopting as proposed amendments to revise how advisers report operational information about their liquidity funds. Under current Form PF, advisers must report whether the liquidity fund uses certain methodologies to compute its net asset value.[496] These questions sought to determine how the fund might try to maintain a stable net asset value.[497] The final amendments replace these questions with a requirement for advisers to report the information more directly, by requiring advisers to report whether the liquidity fund seeks to maintain a stable price per share and, if so, to provide the price it seeks to maintain.[498] As proposed, the final amendments also remove current Question 54 of Form PF, which requires advisers to report whether the liquidity fund has a policy of complying with certain provisions of rule 2a–7, as we can use portfolio information we collect in section 3, Item E, to determine whether the liquidity fund is complying with rule 2a–7, regardless of whether it has a policy or not.
- *Assets and portfolio information.* We are adopting largely as proposed amendments to how advisers report assets and portfolio information in section 3. With respect to fund assets, as proposed, the final amendments will require advisers to report cash separately from other categories when reporting assets and portfolio information concerning repo collateral.[499] Currently, there is not a distinct category for cash for reporting fund assets.[500] We are also adopting as proposed an amended definition of the term ''weekly liquid assets'' to specify that the term includes ''daily liquid assets.'' [501]

As proposed, the final amendments also will require advisers to report additional identifying information about each portfolio security, including the name of the counterparty of a repo.[502] Currently, section 3 requires advisers to name the issuer. However, for repos, it is not clear whether advisers should report the name of the counterparty of the repo, the name of the clearing agency (in the case of centrally cleared repos), or both. The final amendments will address this ambiguity.[503] In addition, under the final amendments, if an adviser reports an ''other unique identifier'' in identifying a portfolio security, the adviser will be required to describe that identifier.[504] This will improve reported data quality and comparability. We are also revising, as proposed, the list of categories of investments that advisers will use to identify a portfolio security in Item E of section 3.[505] Accordingly, the amended form will require advisers to distinguish between U.S. Government agency debt categorized as (1) a coupon-paying note and (2) a no-coupon discount note. These changes will provide more granular information and will enhance the Commission and FSOC's assessment of systemic risk and the Commission's investor protection oversight efforts.

Consistent with the proposed amendments to Form N–MFP, the Commission had proposed to require large liquidity fund advisers to provide information separately for initial and subsequent transactions relating to securities purchased or sold by their liquidity funds during the reporting period.[506] As discussed in section II.F.2.b above, we are not adopting such lot level requirements in Form N–MFP and, accordingly, we are not adopting the proposed lot level reporting requirements for Form PF at this time. The form as amended will continue to require an adviser to report the coupon, if applicable, when reporting the title of the issue.[507] We proposed to remove this requirement in connection with the addition of lot level reporting.

- *Additional Repo Reporting.* In addition to the changes discussed above, we are adopting further amendments to how advisers report information about repos, largely as proposed. The final amendments will require advisers to provide clearing information for repos to inform the Commission and FSOC about liquidity fund activity in various segments of the market.[508] However, in a change from the proposal and consistent with the final amendments discussed above, amended Form PF will continue to permit the advisers to aggregate certain information if multiple securities of an issuer are subject to a repo.[509] This change from the proposal aligns with comparable reporting requirements under amended Form N–MFP.
- *Subscriptions/Redemptions.* We are adopting, as proposed, an amendment to Item B of section 3 that will require information about subscriptions and redemptions. Specifically, under the final amendments, advisers must report the total gross subscriptions (including dividend reinvestments) and total gross redemptions for each month of the reporting period.[510]
- *Financing information.* We are adopting, as proposed, amendments to revise how advisers report financing information to indicate whether a creditor is based in the United States and whether it is a ''U.S. depository institution,'' rather than a ''U.S. financial institution,'' as section 3 currently providers.[511] As amended, advisers will also be required to indicate whether a creditor is based outside the U.S., but will not have to indicate whether that non-U.S. creditor is a depository institution. This amendment is designed to make the categories in section 3 more consistent with the categories the Federal Reserve Board uses in its reports and analysis.[512]
- *Investor information.* We are adopting, largely as proposed, amendments to how advisers report investor information. As proposed, instead of requiring advisers to report

[495] *See* Instruction 3 to Form PF.

[496] *See* current Form PF, section 3, Item A, Questions 52 and 53.

[497] *See* Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, Release No. 3145 (Jan. 26, 2011) [76 FR 8068 (Feb. 11, 2011)], at n.133 and accompanying text.

[498] *See* amended Form PF, section 3, Item A, Question 52.

[499] *See, e.g.,* amended Form PF, section 3, Item B, Question 53(j).

[500] *See* current Form PF, section 3, Item B, Question 55.

[501] *See* amended Form PF Glossary of Terms.

[502] *See* amended Form PF, section 3, Item E, Question 62.

[503] *See id.*

[504] *See* amended Form PF, section 3, Item E, Question 62(e).

[505] *See* amended Form PF, section 3, Item E, Question 62(f).

[506] *See* Form PF Proposing Release, *supra* note 14, at section II.C.

[507] *See* amended Form PF, section 3, Item E, Question 62(b).

[508] *See* amended Form PF, section 3, Item E, Question 62(g)(ii) through (iv).

[509] *See* amended Form PF, section 3, Item E, Question 62(g).

[510] *See* amended Form PF, section 3, Item B, Question 53(k) and (l).

[511] *See* amended Form PF, section 3, Item C, Question 54(b).

[512] The Chairman of the Federal Reserve Board is a member of FSOC.

how many investors beneficially own five percent or more of the liquidity fund's equity, section 3 will require advisers to provide the following information for each investor that beneficially owns five percent or more of the reporting fund's equity: (1) the type of investor; and (2) the percent of the reporting fund's equity owned by the investor.[513] This information will help inform the Commission and FSOC of the liquidity and redemption risks of liquidity funds, because different types of investors may pose different types of redemption risks. For example, if a market event results in a certain type of investor exercising redemption rights, liquidity funds with a homogenous investor base composed of that type of investor could face greater redemption risks, which could raise systemic risk implications, as compared to liquidity funds with a more diversified investor base.

However, we are adopting these amendments with one modification from the proposal. Where an adviser selects ''other'' as an investor category in response to this question, unlike the proposal, the final amendments will require the adviser to describe the investor further in its response to section 1, Question 4.[514] This modification is designed to provide the Commission and FSOC with greater transparency into the investor base of such funds. In addition, we are adopting as proposed a new question requiring advisers to report whether the liquidity fund is established as a cash management vehicle for other funds or accounts that the adviser or the adviser's affiliates manage that are not cash management vehicles.[515]

- *Disposition of portfolio securities.* We are adopting, largely as proposed, new Item F (Disposition of Portfolio Securities) to section 3 of Form PF. Under the amendments, advisers will report information about the portfolio securities the liquidity fund sold or disposed of during the reporting period (not including portfolio securities that the fund held until maturity). Advisers will report the gross market value sold or disposed of for each category of investment.[516] We are also making a formatting change to improve the table presentation of the requirements for reporting the disposition of portfolio securities under section 3, Question 64, Item F, without altering the information reported thereunder.
- *Weighted average maturity and weighted average life.* In addition, we are adopting, as proposed, revisions to the definitions of ''WAM'' and ''WAL'' to include an instruction to calculate these figures with the dollar-weighted average based on the percentage of each security's market value in the portfolio.[517] This change will help ensure advisers calculate WAM and WAL using a consistent approach across both Form PF and Form N–MFP, which will improve data quality and comparability and in turn will enhance investor protection efforts and systemic risk assessment.

As discussed in the 2022 Form PF Proposing Release, together these amendments will improve the transparency of liquidity fund activities and risks and help the Commission and FSOC in developing a more complete picture of the short-term financing markets where liquidity funds operate.[518] In turn, this will enhance the Commission's and FSOC's ability to assess the potential systemic risks presented by liquidity funds' activities and inform the Commission's investor protection efforts. In addition, the amendments will, among other things, improve data comparability across liquidity funds and money market funds, which will assist regulators with oversight and assessment of short-term financing markets and their participants.

G. Technical Amendments to Form N–CSR and Form N–1A

We are adopting amendments to two Commission forms to correct technical errors resulting from recent Commission rulemakings. First, we are adopting an amendment to Form N–CSR to retain an exception addressing money market funds' financial statements that was inadvertently omitted as a result of amendments adopted in the Tailored Shareholder Reports Adopting Release.[519] Second, we are adopting amendments to Item 27A(i) of Form N–1A and the corresponding instructions to correct an error resulting from the Commission's 2022 rulemaking on enhanced reporting of proxy votes by registered management investment companies.[520]

Under the Administrative Procedure Act (''APA''), notice of proposed rulemaking is not required when the agency, for good cause, finds ''that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [521] These amendments are ministerial in nature. Accordingly, we find good cause that publishing the amendments for comment is unnecessary.[522] These ministerial amendments do not make any substantive modifications to any existing collection of information requirements or impose any new substantive recordkeeping or information collection requirements within the meaning of the Paperwork

[513] *See* amended Form PF, section 3, Item D, Question 58.

[514] *See* amended Form PF, section 3, Item D, Question 58(b).

[515] *See* amended Form PF, section 3, Item D, Question 57.

[516] Under the final amendments, advisers will be required to report the gross market value of portfolio securities sold or disposed of, rather than the ''amount'' of such securities as proposed, for consistency with Form N–MFP as adopted. *See* amended Form PF, section 3, Item F, Question 63; Item D.1 of amended Form N–MFP.

[517] *See* amended Form PF Glossary of Terms. This calculation methodology is consistent with amended rule 2a–7's definitions of WAM and WAL.

[518] *See* Form PF Proposing Release, *supra* note 14, at section II.C.

[519] *See* Tailored Shareholder Reports Adopting Release, *supra* note 347. In this release, the Commission adopted amendments under which open-end funds' financial statements will no longer appear in their annual and semi-annual shareholder reports, but instead will be filed on Form N–CSR (under amended Item 7 of Form N–CSR). Pursuant to Instruction 2 to Item 27(b)(1) of Form N–1A, as this item appeared prior to the amendments in the Tailored Shareholder Reports Adopting Release, a money market fund was permitted to omit Schedule I—Investments in securities of unaffiliated issuers—from its annual report under specified circumstances. This exception was omitted inadvertently in the corresponding Item 7 of the amended Form N–CSR in the Tailored Shareholder Reports Adopting Release. We did not intend to remove this exception, and therefore are amending the instruction to Item 7 of Form N–CSR to add language mirroring the parallel exception that formerly appeared in Form N–1A as Instruction 2 to Item 27(b)(1).

[520] *See* Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers, Investment Company Act Release No. 34745 (Nov. 2, 2022) [87 FR 78770 (Dec. 22, 2022)] (''2022 Form N–PX Release''). The Tailored Shareholder Reports Adopting Release included amendments to Form N–1A that moved certain content requirements for funds' shareholder reports from Item 27 of Form N–1A to new Item 27A of Form N–1A. New Item 27A(i) addresses the website availability of additional fund information, including proxy voting information. The 2022 Form N–PX Release, which the Commission issued after it issued the Tailored Shareholder Reports Adopting Release, erroneously included amendments to Form N–1A Item 27—rather than new Item 27A—that address disclosure of the website availability of a fund's proxy voting record in the fund's annual and semi-annual shareholder reports, and the provision of this information to investors upon request. Accordingly, we are adopting amendments to incorporate into Item 27A(i) the requirement, pursuant to the 2022 Form N–PX Release, that the proxy voting information whose website availability funds disclose in their shareholder reports includes the fund's proxy voting record. These amendments also incorporate into Item 27A(i) the same instructions about the provision of this information upon request that the Commission adopted in the 2022 Form N–PX Release in Item 27.

[521] 5 U.S.C. 553(b).

[522] The amendments also do not require analysis under the Regulatory Flexibility Act (''RFA''). *See* 5 U.S.C. 601(2) (for purposes of RFA analysis, the term ''rule'' generally means any rule for which the agency publishes a general notice of proposed rulemaking).

Reduction Act of 1995 (''PRA'').[523] Accordingly, we are not revising any burden and cost estimates in connection with these amendments.

H. Effective and Compliance Dates

We are adopting a tiered approach to the transition periods for the final amendments.[524] The tiered approach to effective and compliance dates is designed to provide affected funds with appropriate transition periods in which to prepare to comply with certain aspects of the final amendments, such as the amendments to rule 2a–7's mandatory and discretionary liquidity fee frameworks, without unnecessarily delaying the full scope of the amendments. The effective date for the final amendments to rule 2a–7, rule 31a–2, and Form N–1A is 60 days after publication in the **Federal Register**, with applicable compliance dates for mandatory and discretionary liquidity fees, liquidity-related amendments, website posting requirements, and WAM and WAL calculations described below. The effective date for the technical amendments to Form N–CSR and Form N–1A also is 60 days after publication in the **Federal Register**. For the final amendments to Forms N–MFP, N–CR, and PF, we are adopting a delayed effective and compliance date of June 11, 2024.

Effective Date for Forms N–MFP, N–CR, and PF and Compliance Date for Website Posting Requirement Under Rule 2a–7

The Commission proposed a six-month compliance period following the effective date for the Forms N–MFP and N–CR amendments, except for the existing fee and gate reporting requirements in Form N–CR. In a change from the proposal, rather than permit filers additional time to comply with the amendments to Forms N–MFP and N–CR following the effective date of such amendments, we are adopting a simultaneous delayed effective and compliance date for these form amendments to provide time for affected funds and advisers to prepare to comply with the form amendments and provide for a uniform transition to the updated reporting requirements. For example, having separate effective and compliance dates for Form N–MFP could cause reporting that is inconsistent across filers because some filers might voluntarily provide newly required information after the effective date of the amendments but before the compliance date, while other filers might wait until the compliance date to provide the new information. We therefore are adopting a delayed effective and compliance date of June 11, 2024, for the amendments to Forms N–MFP, N–CR, and PF. We are also adopting the same compliance date of June 11, 2024, for the amendment to rule 2a–7 regarding how funds categorize their portfolio investments for purposes of website disclosures, as this change in categorization aligns with amendments to Form N–MFP.[525]

A few commenters recommended an implementation period of at least twelve months for any new and revised reporting requirements.[526] In addition, one commenter recommended an 18 to 24 month compliance period for all aspects of the proposed amendments.[527] We are not persuaded that this amount of additional time is needed for affected funds and advisers to comply with the amended reporting requirements because, as discussed above, we are not adopting certain proposed reporting requirements, such as lot-level reporting and disaggregated reporting for repurchase agreements, which will significantly reduce the compliance burden on filers relative to the proposal. In addition, several of the amendments to Form N–MFP will require funds to report daily data points they already publish on their websites, including liquidity levels and net asset values.

Considering the more tailored scope of the final amendments and funds' experience collecting the same or similar data in several cases, we believe the delayed effective date of June 11, 2024, will provide adequate time for affected funds and advisers to compile and review the information that must be disclosed. As a result, all reports on Forms N–MFP, N–CR, and PF filed on or after June 11, 2024, must comply with the amendments.[528]

We are adopting the same delayed effective and compliance date for Form PF as for Form N–MFP because the amendments to Form PF are designed in part to require large liquidity fund advisers to report substantially the same information that money market funds would report on Form N–MFP. Accordingly, adopting the same delayed effective and compliance date for amendments to Form N–MFP and PF will result in a uniform transition to the enhanced reporting obligations.

Compliance Dates for Mandatory and Discretionary Liquidity Fee Frameworks

We are adopting a compliance date for the mandatory liquidity fee framework that is twelve months after the effective date of the final amendments to rule 2a–7. This transition period is designed to provide institutional prime and institutional tax-exempt money market funds with an appropriate amount of time to comply with the new requirements. The Commission proposed a twelve-month transition period for the proposed swing pricing requirements in rule 2a–7. Under the final amendments, we are adopting a mandatory liquidity fee framework in place of the proposed swing pricing requirements and believe institutional prime and institutional tax-exempt money market funds should receive a comparable amount of time in which to comply with these requirements as were proposed for the swing pricing requirements.

Generally commenters advocated for a longer compliance period for the proposed swing pricing requirements, with most of these commenters suggesting 2 years.[529] These commenters frequently cited operational challenges and systems changes, including coordination with third party vendors, which would necessitate more time to adopt and implement swing pricing. A few commenters recommended longer for the swing pricing compliance period than proposed, but did not suggest a specific length of time.[530]

The adopted mandatory liquidity fee framework in rule 2a–7 will require institutional prime and institutional tax-exempt money market funds to update policies and procedures, implement operational and systems changes, and coordinate with third party vendors, among other things. As affected

[523] 44 U.S.C. 3501 through 3521.

[524] *See* Proposing Release, *supra* note 6, at section II.G.

[525] *See* amended rule 2a–7(h)(10)(i)(B)(*2*).

[526] *See, e.g.,* ICI Comment Letter; Invesco Comment Letter; State Street Comment Letter.

[527] *See* T. Rowe Comment Letter.

[528] For example, a money market fund's report on Form N–MFP for the month of June 2024 that is due no later than the fifth business day of July 2024 must comply with the amended reporting requirements.

[529] *See, e.g.,* SIFMA AMG Comment Letter; ICI Comment Letter; Invesco Comment Letter; State Street Comment Letter; Bancorp Comment Letter; Federated Hermes Comment Letter I; Capital Group Comment Letter; CCMR Comment Letter.

[530] *See* IIF Comment Letter; Dechert Comment Letter.

institutional prime and institutional tax-exempt money market funds currently are permitted to impose liquidity fees and are subject to a default liquidity fee when a fund's weekly liquid assets fall below 10%, we believe that many funds and their intermediaries likely will be better positioned to comply with the amended liquidity fee framework than to the proposed swing pricing requirements within 12 months following the effective date. Accordingly, we are not persuaded by the concerns raised by commenters regarding the proposed twelve-month transition period and are adopting a compliance date for the new mandatory liquidity fee framework that is twelve months after the effective date of the rule amendments.

Separately, we are adopting a six-month compliance date for non-government money market funds to comply with the amended discretionary liquidity fee framework. Similar to the mandatory liquidity fee framework, all money market funds seeking to rely on the discretionary liquidity fee framework will need to update policies and procedures, implement operational and systems changes, and coordinate with third party vendors, among other things. However, the discretionary liquidity fee framework is similar to the current liquidity fee provisions in rule 2a–7 without the tie between liquidity fees and weekly liquid assets and provides money market fund boards with additional discretion in implementing these fees. Accordingly, we believe that non-government money market funds will require a shorter transition period than the transition period provided for the new mandatory liquidity fee framework and believe a six-month transition period is appropriate for these amendments.

Affected money market funds, including government money market funds that choose to rely on the discretionary liquidity fee framework, may begin to rely on the mandatory and discretionary liquidity fee provisions after the amendment's effective date and prior to the applicable compliance date.

Compliance Date for Liquidity and Maturity-Related Amendments to Rule 2a–7

We are adopting a compliance date that is six months after the effective date of the amendments to rule 2a–7 for the following amendments:

- Amendments to rule 2a–7's portfolio liquidity requirements discussed in section II.C; and
- Amendments to specify the calculation of WAM and WAL discussed in section II.E.

The Commission proposed a compliance date for the increased daily liquid asset and weekly liquid asset minimum liquidity requirements of six months after the effective date. Some commenters recommended a longer compliance period for the proposed liquidity changes, generally twelve months.[531] We are not persuaded that additional time is needed for affected funds to comply with the amended minimum liquidity requirements. These amendments merely increase an existing framework, and many funds already maintain liquidity close to the newly adopted minimums. Accordingly, we continue to believe a six-month transition period should be sufficient for funds to implement the increased liquidity requirements. We believe that a six-month transition period provides sufficient time for funds to update their stress testing procedures and begin to notify their boards of significant liquidity events. Money market funds are currently required to engage in periodic stress testing so these changes will represent updates to an existing framework. In addition, we understand that many funds already notify their boards of certain declines in liquidity. Accordingly, six months is an adequate amount of time for funds to implement these procedural changes. In addition, six months is sufficient for funds to update their WAM and WAL calculations, as needed. As recognized above, funds already have the market values they need for purposes of the amended WAM and WAL calculations, and many funds already compute these figures in accordance with the approach the final rule specifies.

No Separate Compliance Date for Remaining Amendments to Rule 2a–7, Rule 31a–2, and Form N–1A

The amendments to rule 2a–7 and Form N–1A that are not subject to additional compliance periods above, which includes removal of redemption gates, removal of the tie between liquidity fees and liquidity thresholds, and the new provision allowing share cancellation under certain circumstances, will go into full effect 60 days after publication in the **Federal Register** with no separate compliance date. As a result, funds will no longer be permitted to impose redemption gates under rule 2a–7 as of this date. Similarly, the connection between liquidity fees and weekly liquid asset thresholds will be removed at that time. The Commission proposed that the amendments to remove liquidity fee and redemption gate provisions in rule 2a–7, as well as the associated disclosure requirements, would be effective, if adopted, when the final rule became effective. Several commenters expressly supported the immediate effective date to remove these provisions.[532] We believe that this approach is appropriate since, as discussed, these tools did not provide the benefit intended when adopted and likely contributed to investors' decisions to redeem their shares in money market funds in March 2020. In addition, the amendments to permit the use of share cancellation in a negative interest rate environment, subject to certain conditions, will become effective 60 days after publication in the **Federal Register**. As a result, funds could begin to use share cancellation, as appropriate, after this date, provided they meet the rule's conditions for using share cancellation.

Further, the amendments to rule 31a–2 to require money market funds to preserve records regarding their liquidity fee computations will become effective 60 days after publication in the **Federal Register**. Money market funds are not required to comply with the amended liquidity fee requirements in rule 2a–7 until after that date, but the earlier effectiveness of the recordkeeping requirement will require that funds preserve records for any liquidity fees they may apply prior to the end of the compliance period for the liquidity fee requirements.

III. Other Matters

Pursuant to the Congressional Review Act, the Office of Information and Regulatory Affairs has designated the final amendments as a ''major rule'' as defined by 5 U.S.C. 804(2). If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

IV. Economic Analysis

A. Introduction

The Commission is mindful of the economic effects, including the costs and benefits, of the final amendments. Section 2(c) of the Investment Company Act provides that when the Commission is engaging in rulemaking under the Act and is required to consider or determine

[531] *See, e.g.,* ICI Comment Letter; State Street Comment Letter.

[532] *See, e.g.,* Federated Hermes Comment Letter I (supporting the immediate effectiveness of delinking liquidity fees and redemption gates from liquidity thresholds); State Street Comment Letter.

whether an action is consistent with the public interest, the Commission shall also consider whether the action will promote efficiency, competition, and capital formation, in addition to the protection of investors. Section 202(c) of the Advisers Act provides that when the Commission is engaging in rulemaking under the Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider whether the action will promote efficiency, competition, and capital formation, in addition to the protection of investors. The analysis below addresses the likely economic effects of the final amendments, including the anticipated and estimated benefits and costs of the amendments and their likely effects on efficiency, competition, and capital formation. The Commission also discusses the potential economic effects of certain alternatives.

Money market funds serve as intermediaries between investors seeking to manage cash and receive a return on their savings, and issuers seeking to raise capital. Specifically, money market funds pool a diversified portfolio of short-term debt instruments (such as government and municipal debt, repurchase agreements, commercial paper, certificates of deposit, and other short-term debt instruments), and sell shares to end investors, who use money market funds to manage liquidity needs. Money market funds play an important role in investors' savings and liquidity management and serve as a source of short-term funding to financial and non-financial companies and governments. However, funding of money market funds is subject to daily and intraday redemptions.[533]

As discussed in detail in the sections that follow, the final amendments seek to address liquidity externalities in money market funds. Under some circumstances, redeeming investors impose negative liquidity externalities on investors remaining in the fund. Should redemptions lead to dilution, they may amplify a first-mover advantage, further incentivizing redemptions. For example, when early redemptions force a money market fund to draw down on liquid assets, they reduce overall fund liquidity available for future redemptions. By reducing liquidity externalities in money market funds, the final amendments may dampen the risk of runs on money market funds.

The final amendments may mitigate liquidity externalities and run risk in money market funds in three ways. First, the removal of the tie between weekly liquid assets and the potential imposition of liquidity fees and the elimination of redemption gates under rule 2a–7 may reduce incentives of investors to redeem early to avoid losing liquidity during a potential gating period.[534] Second, the increases in minimum liquidity requirements may support funds' ability to meet redemptions from cash or securities convertible to cash, which may reduce transaction costs associated with redemptions and corresponding dilution borne by remaining investors. This may be especially important in market conditions in which money market funds cannot rely on a secondary or dealer market to provide liquidity. Third, the liquidity fee framework is intended to require redeeming investors to absorb the liquidity costs they impose on the fund, protecting non-transacting investors from being diluted by redeeming investors.[535] Moreover, to the degree that dilution may contribute to a first mover advantage in investor redemptions the liquidity fee framework may reduce such incentives. These effects may be especially significant in times of stress, when liquidity externalities of money market fund redemptions may be more significant.

In addition, the Commission is adopting amendments to Form N–CR and Form N–MFP, which may enhance Commission oversight over redemption activity and liquidity risks in money market funds. Similarly, the Commission is finalizing amendments to Form PF to require generally parallel reporting requirements for liquidity funds. These amendments may improve the transparency of liquidity fund activities and risks and help the Commission and FSOC in developing a more complete picture of short-term financing markets, in which money market funds and liquidity funds operate.

Finally, the final amendments related to negative yields will provide an additional mechanism that government and retail money market funds could use to handle a negative interest rate scenario, while offering valuable flexibility to funds and enhancing transparency about this decision to investors. Similarly, as discussed in greater detail below, the amendments to specify the method of calculation of weighted average maturity and weighted average life will enhance comparability of these metrics across affected funds and increase transparency to the Commission and investors.

In response to comment regarding the assumptions underlying the proposal's cost-benefit analysis,[536] we note that the economic analysis discusses, among other considerations, how the final rule's costs and benefits reflect current liquidity management practices of money market funds, incentives of fund managers, and run risk. In addition, as discussed in section II above, the final rule has been modified in many significant ways relative to the proposal to reflect commenter feedback. For example, the final rule imposes a liquidity fee framework in lieu of the proposed swing pricing requirement, modifies amendments related to potential negative interest rates relative to the proposal, and tailors disclosure requirements to reduce burdens on money market funds.

Many of the benefits and costs discussed below are difficult to quantify. For example, we lack data to quantify how funds currently below the new liquidity thresholds may adjust the liquidity of their portfolios and how this may impact fund yields in different interest rate environments; the extent to which investors may move capital from institutional prime to government money market funds; or the reductions in dilution costs to investors as a result of the final amendments (which will depend on investor redemption activity, the liquidity risk of underlying fund assets, and market conditions). Many of these effects will depend on how affected funds and investors may react to the final amendments. In addition, we cannot quantify how large private liquidity fund advisers may adapt existing systems and levels of technological expertise in response to the final rule. Data needed to quantify these economic effects are not currently available and the Commission does not have information or data that would allow such quantification. While we have attempted to quantify economic effects where possible, much of the discussion of economic effects is qualitative in nature.

[533] *See* Proposing Release at 7292–7294 for an analysis of portfolio holdings of different types of money market funds.

[534] *See, e.g.,* Northern Trust Comment Letter; CFA Comment Letter; Western Asset Comment Letter; Allspring Funds Comment Letter; IIF Comment Letter; SIFMA AMG Comment Letter.

[535] Factors other than dilution costs—such as falling asset prices and potential differences between a fund's net asset value and execution prices—may also contribute to runs. These and other considerations are discussed in greater detail in section IV.B below.

[536] *See, e.g.,* Federated Hermes Comment Letter IV.

B. Baseline

1. Money Market Funds

a. Money Market Funds: Affected Entities

The final amendments would directly affect money market funds registered with the Commission. From Form N–MFP data, there are a total of 294 funds with approximately $5.7 trillion in total net assets that may be affected by various aspects of the final amendments.[537] Table 3 and Table 4 below estimate the number and total net assets of funds by fund type as of the end of March 2023. Prime money market funds account for approximately 20% of the total net assets in the industry, whereas tax-exempt money market funds account for approximately 2%.

TABLE 3—NUMBER OF MONEY MARKET FUNDS BY FUND TYPE, AS OF MARCH 2023

Category	Fund type	Count	Share (%)
Prime	Institutional Public	31	11
	Institutional Nonpublic	9	3
	Retail	20	7
Tax-exempt	Institutional	12	4
	Retail	39	13
Government & Treasury	Government	133	45
	Treasury	50	17
Total	Total	294	100

Source: Form N–MFP.

TABLE 4—MONEY MARKET FUND NET ASSETS BY FUND TYPE ($ BILLIONS), AS OF MARCH 2023

Category	Fund type	Net assets	Share (%)
Prime	Institutional Public	311.8	5
	Institutional Nonpublic	332.8	6
	Retail	505.8	9
Tax-exempt	Institutional	14.7	0
	Retail	103.8	2
Government &Treasury	Government	2,961.0	52
	Treasury	1,474.4	26
Total	Total	5,704.3	100

Source: Form N–MFP.

b. Money Market Fund Investors

Several features of money market funds can create an incentive for their investors to redeem shares heavily in periods of market stress. As in the Proposing Release, we consider these factors below, as well as the adverse impacts that can result from such heavy redemptions out of money market funds. Moreover, this section provides updated information about trends in the money market fund sector in light of the recent banking stress of 2023.

As discussed in the Proposing Release,[538] money market fund investors have varying investment goals and risk tolerances. Many investors use money market funds for principal preservation and as a cash management tool. Such investors may be risk averse and averse to losing access to liquidity for many reasons, including general risk tolerance, legal or investment policy restrictions, or short-term cash needs. These overarching considerations may create incentives for money market fund investors to redeem—incentives that may persist regardless of market conditions and even if the other dilution-related incentives discussed below are addressed by the final amendments.

The desire to avoid loss and access to liquidity may cause investors to redeem from certain money market funds in times of stress. For example, heavy redemptions from prime money market funds and subscriptions in government money market funds during the 2008 financial crisis pointed to a flight to quality, given that most of the assets held by government money market funds have a lower default risk than the assets of prime money market funds.[539] As another example, during peak market stress in March 2020, investor redemptions may have been driven by liquidity considerations, among other things.

In addition, under the baseline, as long as investors consider their money market investments as relatively liquid and low risk, the possibility that a fund may impose gates or fees when a fund's weekly liquid assets fall below 30% under rule 2a–7 may contribute to the risk of triggering runs, particularly from institutional investors that commonly monitor their funds' weekly liquid asset levels.[540] As discussed above, some research suggests that, during peak market volatility in March 2020, institutional prime money market fund outflows accelerated as funds' weekly liquid assets went closer to the 30% threshold.[541] In order to avoid approaching or breaching the 30% weekly liquid asset threshold for the possible imposition of redemption gates, money market fund managers may also

[537] *See, e.g.,* Money Market Fund Statistics, released 4/25/2023, *available at https://www.sec.gov/files/mmf-statistics-2023-03.pdf.*

[538] *See, e.g.,* 87 FR 7289.

[539] *Id.*

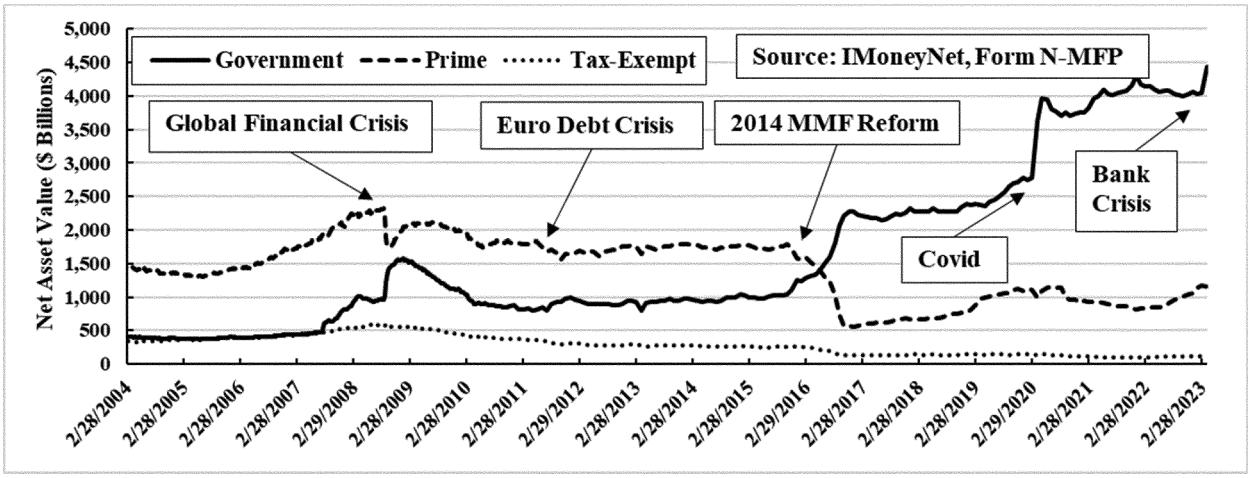
[540] *Id.*

[541] *See, e.g.,* Lei Li, et al., *Liquidity Restrictions, Runs, and Central Bank Interventions: Evidence From Money Market Funds,* 34 Rev. Fin. Stud. 5402, 5402–5437 (2021). *See also, e.g.,* Morgan Stanley Comment Letter; ICI Comment Letter; Northern Trust Comment Letter; Fidelity Comment Letter.

choose to sell less liquid portfolio securities during times of stress.[542]

Finally, investors in different types of money market funds may behave differently under stress, and fund portfolios may interact with investor behavior to impact systemic run risk. As discussed in section I.B, institutional fund investors may monitor economic developments more closely than retail investors and may be more prone to running in times of market stress. In addition, prime funds tend to invest in riskier securities that may suffer losses in crises. For instance, prime funds held Lehman Brothers debt when it defaulted in 2008 and had exposure to Eurozone banks in 2011.[543] Moreover, during both the global financial crisis of 2008 and the market dislocation of 2020, prime funds held commercial paper, the market for which froze.[544] Tax-exempt money market funds may also experience redemption pressures in times of market stress. Government money market funds, in contrast, tend to have counter-cyclical flows. Specifically, during times of market turmoil and volatility, investors—particularly institutional investors—tend to shift their investments to government money market funds.[545] These money market funds offer investments with high credit quality and liquidity, as well as an explicit guarantee for certain government securities (*e.g.,* Treasuries) and a perceived implicit guarantee for others (*e.g.,* Federal Home Loan Bank securities). As shown below, these funds experienced inflows during the global financial crisis of 2008, Euro debt crisis of 2011, Covid–19 pandemic of 2020 and the bank crisis in 2023.

Figure 1—Trends in Net Asset Values of Different Types of Money Market Funds



Most recently, the money market fund sector experienced significant inflows during stress in the banking sector between February and April of 2023. For example, between February 1 and March 15, 2023, $201 billion in bank deposits left the banking sector and $191 billion flowed into money market funds. The rate at which deposits left the banking sector and flowed into the money market fund sector accelerated in March: between March 1 and April 5, 2023, $362 billion flowed into money market funds, primarily into Treasury retail ($54 billion), Treasury institutional ($122 billion), government agency institutional ($161 billion), and government agency retail ($41 billion) funds. To the degree that some of the same market participants may allocate across asset classes, there may be spillovers in run risk between money market funds and the banking system, which may enhance the importance of mitigating run risk in money market funds.

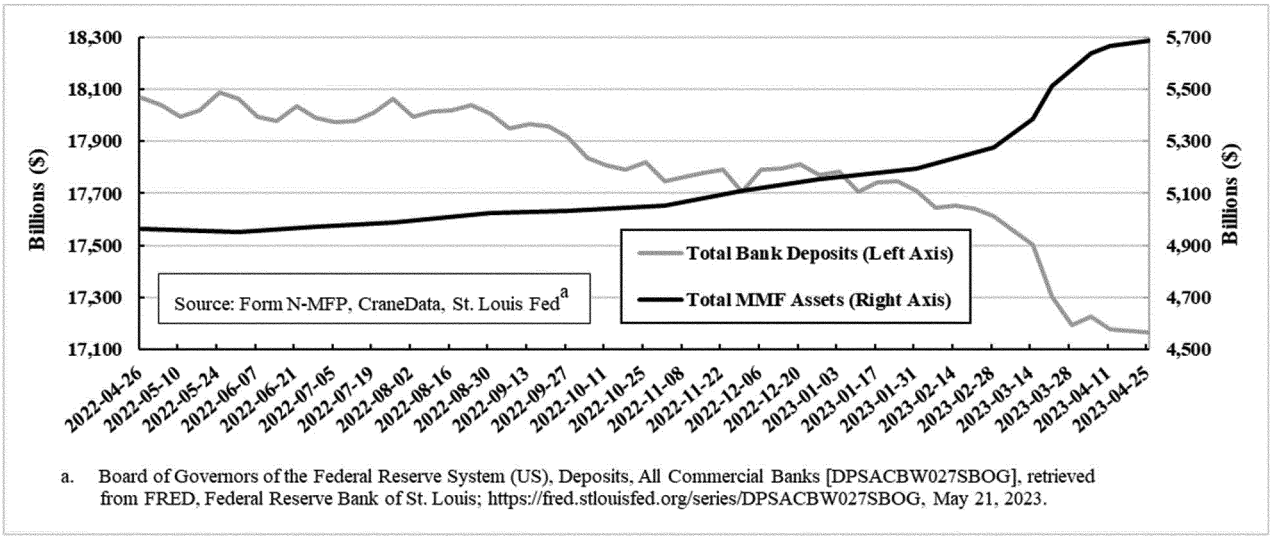
Figure 2—Trends in Total Bank Deposits and Money Market Fund Assets During the Banking Stress of 2023

[542] Some commenters indicated that, on aggregate, prime money market funds pulled back little from commercial paper markets as they were largely unable to resell commercial paper and CDs to issuing banks and such securities lack a liquid secondary market. *See, e.g.,* ICI Report, Experiences of U.S. Money Market Funds During the Covid–19 Crisis (Nov. 2020) (''ICI MMF Report''), available at *https://www.sec.gov/comments/credit-market-interconnectedness/cll10-8026117-225527.pdf.*

[543] *See, e.g.,* Response to Questions Posed by Commissioners, Aguilar, Paredes, and Gallagher, Division of Risk, Strategy, and Financial Innovation, U.S. Securities and Exchange Commission, Nov. 30, 2012, *available at https://www.sec.gov/news/studies/2012/money-market-funds-memo-2012.pdf.*

[544] *See, e.g.,* President's Working Grp. On Fin. Mkts., Overview of Recent Events and Potential Reform Options for Money Market Funds (2020), *available at https://home.treasury.gov/system/files/136/PWG-MMF-report-final-Dec-2020.pdf.*

[545] *Id.*



a. Board of Governors of the Federal Reserve System (US), Deposits, All Commercial Banks [DPSACBW027SBOG], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/DPSACBW027SBOG, May 21, 2023.

c. Liquidity Externalities and Dilution Costs

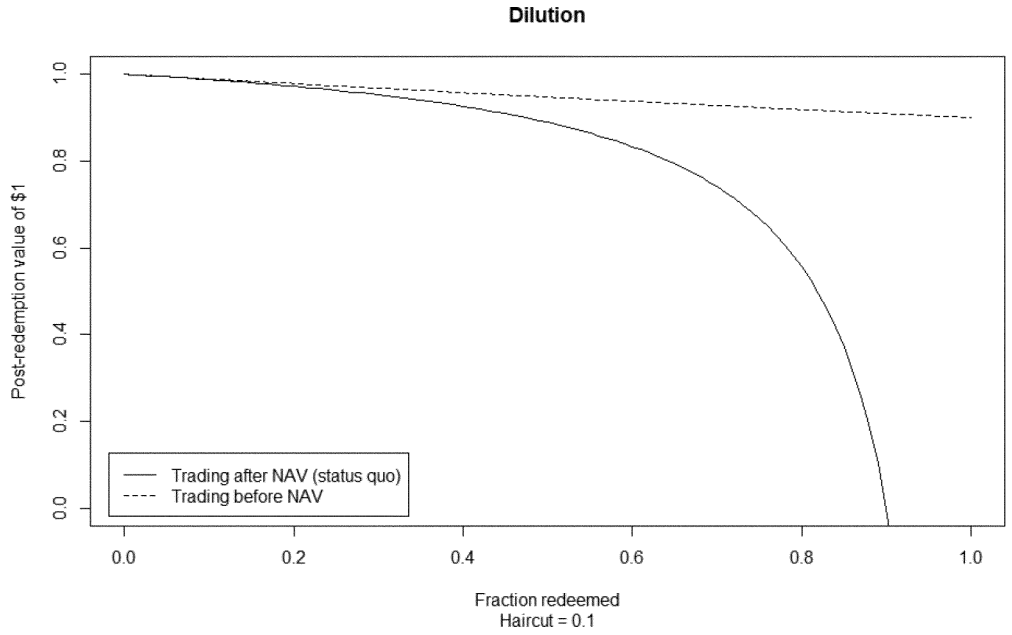
Money market fund investors can incur dilution costs. Specifically, the value of shares held by investors staying in the fund may be diluted if other fund investors transact at a NAV that does not fully reflect the ex post realized costs of the fund's trading induced by fund flows. Shareholders in floating NAV and stable NAV funds may bear dilution costs in different forms. In floating NAV funds, dilution is reflected in the NAV received by remaining shareholders. In stable NAV funds, dilution costs can accrue until the fund's shadow price declines below $0.995, which may result in the fund breaking the buck and re-pricing its shares below $1.00. Fund sponsors can also choose to absorb some or all of the dilution costs for reputational reasons but are not obligated to do so. In both types of funds, redemptions can deplete liquidity, increasing the potential for future dilution.

Several factors can contribute to the dilution of investors' interests in money market funds. First, trading costs can lead to dilution. Trading activity and other changes in portfolio holdings associated with meeting redemptions may impose costs, including trading costs and costs of depleting a fund's daily or weekly liquid assets. If these costs are realized prior to the time the fund strikes the NAV, they are distributed across both transacting and non-transacting investors. However, if these costs are realized after NAV strike, they are borne solely by non-transacting shareholders that remain in the fund. For low levels of net redemptions or subscriptions, the difference between the two scenarios for non-transacting shareholders is low; however, for large net redemptions, the difference in dilution costs borne by non-transacting shareholders can be stark.

Using a stylized example, Figure 3 compares the dilution attributed to trading costs that occurs when a fund trades to meet redemptions after NAV is struck (as is currently the case in the U.S.) with the dilution attributed to trading costs that occurs if a fund is able to trade to accommodate investor redemptions/subscriptions prior to the NAV strike (dotted straight line). This stylized example assumes that a fund holds a single asset whose value is constant, but liquidating the asset incurs a spread/haircut of 10%. The haircut assumption in this stylized example is used purely for illustrative purposes; haircuts on assets in money market funds tend to be much smaller. However, this example demonstrates that larger redemptions can contribute nonlinearly to higher dilution for remaining shareholders when a fund trades after the NAV is struck compared to a scenario in which the fund trades before the NAV is struck.[546]

Figure 3—Dilution Effects of Different Trading Timelines Over 1 Day

[546] To the degree that some funds may determine their NAV using holdings as of the prior trading day, such practices may also exacerbate dilution. In Figure 3, if funds strike their NAV using current trading day holdings, the dotted line would not be decreasing.



Second, stale prices could contribute to dilution, especially during times of market stress. Some assets that money market funds hold may become illiquid and stop trading during times of market stress.[547] In such events, the only available prices for these assets are prices realized during pre-stress market conditions, *i.e.,* stale prices. If a floating NAV fund's NAV on a given date is based on stale prices, net redemptions at that NAV can dilute non-transacting fund shareholders when assets are eventually sold at prices that reflect their true value. Since funds with a stable NAV have a fixed share price at $1, stale prices only affect the shadow price per share and the probability that a fund breaks the buck and potentially leads to sponsor support. The stale pricing phenomenon has been documented in fixed income funds [548] and not specifically in money market funds. However, money market funds hold significant amounts of commercial paper, certificates of deposit, and other assets that do not have an active and robust secondary market, making them similarly opaque and difficult to accurately price, especially during times of market stress.

Knowing that these and other factors [549] may contribute to dilution, money market fund investors may have an incentive to redeem quickly in times of stress to avoid realizing potential dilution, an effect exacerbated if they believe other investors will redeem.[550] Some research in a parallel open end fund setting suggests that liquidity externalities may create a ''first-mover advantage'' that may lead to cascading anticipatory redemptions akin to traditional bank runs.[551] There is a dearth of academic research about the degree to which dilution costs alone may trigger money market fund runs. In addition, theoretical models of such first-mover advantage typically rely on some exogenous mechanism to generate initial redemptions from funds.[552] While stale NAV and trading costs can create incentives for early redemptions, redemptions also occur for reasons that are not strategic, such as a desire to rebalance portfolios and investors' immediate need for liquidity.

Regardless of the reason for a fund experiencing net redemptions on any given day, such redemptions impose a cost on investors remaining in the fund in the absence of measures to take trading costs into account. In addition, since money market funds can trade portfolio holdings to meet redemptions or subscriptions, money market fund liquidity management can both dampen and magnify disruptions in underlying securities markets.

In addition, trends in composition of money market fund portfolios, NAV and price volatility, as well as liquidity management practices of money market

[547] *See, e.g.,* ICI MMF Report, *supra* note 542.

[548] *See, e.g.,* Jaewon Choi, et al., *Sitting Bucks: Stale Pricing in Fixed Income Funds,* 145 J. Fin. Econ. 296, 296–317 (Aug. 2022).

[549] For example, market risk may contribute to dilution costs. If a fund redeems investors at a given NAV, but must raise funds to meet those redemptions on a subsequent trading day during which the value of the fund's holdings declines significantly, non-transacting shareholders will be diluted. Conversely, non-transacting money market fund investors can benefit if assets are sold at a price higher than NAV. While the value of the fund's holdings can go both up and down, such market risk amplifies the risk fund shareholders would otherwise experience. However, since true market prices may be very difficult to forecast, the degree to which such dilution contributes to the first-mover advantage is unclear.

[550] Run dynamics in banking contexts have been subject of extensive research. *See, e.g.,* Douglas Diamond & Philip Dybvig, *Bank Runs, Deposit Insurance and Liquidity,* J. Pol. Econ. 401, 401–419 (1983). However, we recognize that this and related bank run models may have less applicability for the money market fund context due to differences between banks and money market funds in, among others, the amount of maturity, liquidity, and credit risk transformation, leverage, and transparency about portfolios. *See, e.g.,* Federated Hermes 11/22 Comment Letter.

[551] This research generally models an exogenous response to negative fund returns and not trading costs. However, these results may extend to trading costs to the degree that cost based dilution may reduce subsequent fund returns, which would trigger runs in these models. *See, e.g.,* Qi Chen, et al., *Payoff Complementarities and Financial Fragility: Evidence From Mutual Fund Outflows,* 97 J. Fin. Econ. 239, 239–262 (2010). *See also* Itay Goldstein, et al., *Investor Flows and Fragility in Corporate Bond Funds,* 126 J. Fin. Econ. 592, 592–613 (2017). *See also* Stephen Morris, et al., *Redemption Risk and Cash Hoarding by Asset Managers,* J. Monetary Econ. 71, 71–87 (2017). *See also* Yao Zeng, *A Dynamic Theory of Mutual Funds and Liquidity Management* (ESRB working paper no. 2017/42, Apr. 2017), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3723389* (retrieved from SSRN Elsevier database). *See also* Yiming Ma, et al., *Mutual Fund Liquidity Transformation and Reverse Flight to Liquidity,* 35 Rev. Fin. Stud. 4674, 4674–4711 (2022). *See also* Yiming Ma, et al., *Bank Debt Versus Mutual Fund Equity in Liquidity Provision* (Jacobs Levy Equity Mgmt. Ctr. Quantitative Fin. Rsch. Paper, Dec. 2019, last revised Dec. 16, 2022), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3489673* (retrieved from SSRN Elsevier database).

[552] For example, one model assumes that investors redeem from funds following poor performance. *See* Qi Chen, et al., *Payoff Complementarities and Financial Fragility: Evidence From Mutual Fund Outflows,* 97 J. Fin. Econ. 239, 239–262 (2010).

funds form a part of the baseline against which we are assessing the effects of the final rule. A detailed quantitative analysis of these issues can be found in the Proposing Release.[553]

Finally, as a baseline matter, money market funds in the U.S. have not experienced persistent negative yields. Thus, stable NAV funds have not implemented reverse distribution mechanisms or conversions to a floating NAV in response to negative yields. However, as discussed in section II, the Commission has received comment that reverse distribution mechanisms may be a more cost efficient measure for funds to deploy in the event of persistent negative yields given their baseline fund management practices.[554] These and related economic effects are discussed in greater detail in section IV.C.5.

d. Regulatory Baseline

The Commission is assessing the economic effects of the final amendments relative to a regulatory baseline, which reflects rules and forms imposed on affected money market funds currently in effect. Specifically, for the purposes of this economic analysis, the regulatory baseline includes, among others, rule 2a–7, rule 22c–2, and rule 22e–3, and existing Forms PF, N–MFP, N–CR, and N–1A, as discussed in greater detail in section II.

2. Large Liquidity Funds and Form PF

Some of the final amendments impact the reporting by investment advisers on Form PF regarding private liquidity funds. The Commission adopted Form PF in 2011, with additional amendments made to section 3 along with certain money market fund reforms in 2014. Form PF complements the basic information about private fund advisers and private funds reported on Form ADV.[555] Unlike Form ADV, Form PF is not an investor-facing disclosure form. Information that private fund advisers report on Form PF is provided to regulators on a confidential basis and is nonpublic.[556] The purpose of Form PF is to provide the Commission and FSOC with data that regulators can deploy in their regulatory and oversight programs directed at assessing and managing systemic risk and protecting investors both in the private fund industry and in the U.S. financial markets more broadly.

Currently, liquidity fund advisers with between $150 million and $1 billion in assets file Form PF annually, which contains general information about funds they manage. Large liquidity fund advisers with at least $1 billion in combined regulatory assets under management attributable to liquidity funds and money market funds are required to file Form PF quarterly and provide more detailed data on the liquidity funds they manage (section 3 of Form PF).[557] In the third quarter of 2022, there were 79 liquidity funds reported on Form PF with $336 billion in gross assets under management.[558] Of those, 51 funds were large liquidity funds with $331 billion in gross assets, which represented approximately 99 percent of the reported liquidity fund assets.[559]

Liquidity funds are a relatively small [560] category of private funds, that plays a similar role to money funds.[561] Liquidity funds follow similar investment strategies as money market funds, but are not registered as investment companies under the Act.[562] Similar to money market funds, liquidity funds are managed with the goal of maintaining a stable net asset value or minimizing principal volatility for investors.[563] These funds typically achieve these goals by investing in high-quality, short-term debt securities, such as Treasury bills, repurchase agreements, or commercial paper, that fluctuate very little in value under normal market conditions.[564] Also, similar to money market funds, liquidity funds are sensitive to market conditions and may be exposed to losses from certain of their holdings when the markets in which the funds invest are under stress. Compared to money market funds, liquidity funds may take on greater risks and, as a result, may be more sensitive to market stress, as they are not required to comply with the risk-limiting conditions of rule 2a–7, which place restrictions on the maturity, diversification, credit quality, and liquidity of money market fund investments.[565]

3. Other Affected Entities

As discussed above, some of the final amendments may indirectly affect a large group of intermediaries and service providers. Specifically, as a result of the liquidity fee requirement, certain money market funds may seek to receive more timely flow information and streamline the assessment of fees to end investors down the intermediary chain. As discussed in greater detail below, this may affect all market participants sending orders to relevant money market funds, including broker-dealers, registered investment advisers, retirement plan record-keepers and administrators, banks, other registered investment companies, and transfer agents that receive flows directly. In addition, amendments related to stable NAV money market funds in the event of a negative rate environment may affect intermediaries sending flows to such funds.

In addition, the final amendments may indirectly affect issuers of

[553] *See* 87 FR 7292 through 7298.

[554] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; Federated Hermes Comment Letter I; Allspring Funds Comment Letter; Fidelity; BNY Mellon Comment Letter; State Street Comment Letter; Sen. Toomey Comment Letter; Americans for Tax Reform Comment Letter; Dechert Comment Letter; CCMR Comment Letter; IDC Comment Letter.

[555] Investment advisers to private funds report on Form ADV general information about private funds that they advise. This includes basic organizational, operational information, and information about the fund's key service providers. Information on Form ADV is available to the public through the Investment Adviser Public Disclosure System, which allows the public to access the most recent Form ADV filing made by an investment adviser. *See, e.g.,* Form ADV, available at *https://www.investor.gov/introductioninvesting/investing-basics/glossary/form-adv.* See also Investment Adviser Public Disclosure, available at *https://adviserinfo.sec.gov/.* Some private fund advisers that are required to report on Form ADV are not required to file Form PF (for example, exempt reporting advisers). Other advisers are required to file Form PF and are not required to file Form ADV (for example, commodity pools that are not private funds). Based on the staff review of Form ADV filings and the Private Fund Statistics, less than 10% of funds reported on Form ADV but not on Form PF in 2020.

[556] Commission staff publish quarterly reports of aggregated and anonymized data regarding private funds on the Commission's website. *See* Private Fund Statistics, Securities and Exchange Commission: Division of Investment Management, *available* at *https://www.sec.gov/divisions/investment/private-funds-statistics.shtml.*

[557] Item A of section 3 of Form PF collects certain information for each liquidity fund the adviser manages, such as information regarding the fund's portfolio valuation methodology. This item also requires information regarding whether the fund, as a matter of policy, is managed in compliance with certain provisions of rule 2a–7 under the Investment Company Act. Item B requires the adviser to report information regarding the fund's assets, while Item C requires the adviser to report information regarding the fund's borrowings. Finally, Item D asks for certain information regarding the fund's investors, including the concentration of the fund's investor base and the liquidity of its ownership interests. See Form PF.

[558] *See* Division of Investment Management, Private Fund Statistics (Apr. 6, 2023), *available at https://www.sec.gov/divisions/investment/private-funds-statistics.shtml.*

[559] *Id.*

[560] According to the Private Fund Statistics Report, in the third quarter of 2023, liquidity fund assets accounted for 1.5% of the gross asset value ($0.3/$19.9 trillion) and 2.2% of the NAV ($0.3/$13.8 trillion) of all private funds reported on Form PF.

[561] *See* Daniel Hiltgen, *Private Liquidity Funds: Characteristics and Risk Indicators,* DERA White Paper (Jan. 2017) (''Hiltgen Paper''), *available at https://www.sec.gov/files/2017-03/Liquidity%20Fund%20Study.pdf.*

[562] *Id.*

[563] *See* section II above.

[564] *See* Hiltgen Paper.

[565] *See* section II above.

securities that are held by affected funds, including issuers of certificates of deposit and commercial paper, and municipalities. While nothing in the final amendments imposes any requirements on issuers, to the degree that the final amendments may influence affected funds' willingness to hold such securities, they may influence the ability of such issuers to raise debt financing, the terms of such financing, or the type of investors that provide debt financing to such issuers. These and other effects are discussed in greater detail in sections IV.C and IV.E.

C. Costs and Benefits of the Final Amendments

1. Removal of the Tie Between the Weekly Liquid Asset Threshold and Liquidity Fees and Redemption Gates

a. Benefits

The final amendments remove the tie between money market funds' weekly liquid assets and the discretionary imposition of liquidity fees, as well as eliminate gate provisions from rule 2a–7. In addition, the final rule removes the tie between the 10% weekly liquid asset threshold and the imposition of default liquidity fees. Commenters generally supported these proposed revisions.[566]

These amendments may benefit money market fund investors by reducing liquidity costs borne by investors remaining in the fund, and money market funds and their investors by reducing the risk of runs, especially during times of liquidity stress.

First, these amendments may benefit money market fund investors. Money market fund redemptions can impose liquidity externalities on shareholders remaining in the fund, as discussed in section IV.B.1. The possibility of a redemption gate or a redemption fee when linked to a weekly liquid asset threshold can magnify those incentives and externalities. The Commission continues to believe that the weekly liquid asset triggers for the possible imposition of redemption fees or gates create incentives for investors to redeem first, at the expense of investors remaining in the fund who experience further dilution during the gating period, and for fund managers to use less liquid assets to meet redemptions which imposes liquidity costs on non-transacting investors. Thus, the removal of the tie between the weekly liquid asset trigger and the possible imposition of liquidity fees as well as the elimination of redemption gates outside of liquidation may reduce the liquidity costs borne by investors remaining in the fund. This aspect of the final amendments may increase the attractiveness of money market funds as a low risk cash management tool and sweep investor account to risk averse investors.

Second, these amendments may benefit money market funds by reducing the risk of runs. As discussed in the introduction, money market funds are subject to daily redemptions and invest in short-term debt instruments that are not perfectly liquid, which renders them susceptible to a first-mover advantage in investor redemptions.[567] Under the current baseline, money market funds may impose redemption fees or gates if their weekly liquid assets are below 30% of their total assets. Thus, because weekly liquid assets tend to be persistent over time, as funds approach the 30% threshold, investors seeking to avoid a redemption gate or fee are incentivized to redeem before other redemptions further deplete a fund's liquid assets.[568] For example, we have received comment that daily and weekly liquid asset balances became a closely watched metric for institutional investors worried about preserving access to their invested funds, and that, for a large majority of institutional investors that had reduced their investments in prime money market funds in March 2020, gates were an important factor in deciding to redeem.[569] The final amendments are expected to reduce such incentives to redeem, especially in times of stress.[570] Moreover, as discussed in section II.A.1, the link between the 30% weekly liquid asset threshold and the possibility of the imposition of fees or gates did not serve as a useful liquidity management tool in March 2020 (no fund imposed fees or gates). However, available evidence suggests that such a link may have incentivized funds to preserve their weekly liquid assets instead of using them to absorb redemptions, in order to stay above the 30% threshold.[571] The removal of redemption gates and the tie between weekly liquid assets and liquidity fees reduces disincentives for funds to absorb large redemptions out of liquid assets.

As a result, the removal of redemption gates and the tie between weekly liquid assets and the discretionary and default imposition of liquidity fees may better enable funds to use their daily and weekly liquid assets to meet redemptions in times of stress without giving rise to risk of runs.[572] This benefit may be strongest for money market funds that have weekly liquid assets close to the minimum threshold during times of liquidity stress, as they are currently most susceptible to runs. Moreover, money market fund investors would no longer face the possibility of the imposition of gates outside of liquidations, enhancing the attractiveness of money market funds as a highly liquid investment product.

Overall, we believe that the final rule, including the liquidity fee framework and the raised liquidity requirements, will provide more efficient tools for managing liquidity risk than the current baseline approach tying the potential imposition of fees to weekly liquid asset thresholds while reducing incentives for strategic redemptions, as discussed in greater detail in the sections that follow.

b. Costs

As discussed in section II.A, the final amendments will not only remove the tie between fund weekly liquid assets and the possibility of gating and fees, but will also eliminate gate provisions from rule 2a–7. As a result, money market funds will only be able to impose gates in the event of liquidation under rule 22e–3. To the degree that temporary redemption gates may serve as a useful redemption management tool during times of stress, the amendment would reduce the scope of tools available to money market funds to manage their liquidity risk in times of stress. For example, some commenters suggested that fund boards should have the ability to impose gates at their discretion.[573] One of these commenters indicated that retaining a board's ability to implement either a gate in its

[566] *See, e.g.,* Americans for Tax Reform Comment Letter; Profs. Ceccheti and Schoenholtz Comment Letter; CCMR Comment Letter; Federated Hermes I Comment Letter; Western Asset Comment Letter; Morgan Stanley Comment Letter; Vanguard Comment Letter; CFA Comment Letter; Fidelity Comment Letter; SIFMA Comment Letter; T.Rowe Price Comment Letter.

[567] *See, e.g.,* Lawrence Schmidt et al., *Runs on Money Market Mutual Funds,* 106 Am. Econ. Rev. 2625, 2625–57 (2016). Run dynamics in funds have been explored in a large body of finance research, including, for example: Yao Zeng, *A Dynamic Theory of Mutual Funds and Liquidity Management* (ESRB working paper no. 2017/42, Apr. 2017), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3723389* (retrieved from SSRN Elsevier database). *See also* Qi Chen et al., *Payoff Complementarities and Financial Fragility: Evidence from Mutual Fund Outflows,* 97 J. Fin. Econ. 239, 239–262 (2010).

[568] *See, e.g.,* Fidelity Comment Letter; Northern Trust Comment Letter; IIF Comment Letter; ICI Comment Letter.

[569] *See, e.g.,* CFA Comment Letter.

[570] *See, e.g.,* Americans for Tax Reform Comment Letter; Profs. Ceccheti and Schoenholtz Comment Letter; CFA Comment Letter.

[571] *See, e.g., supra* note 56.

[572] *See, e.g.,* Federated Hermes Comment Letter I.

[573] *See, e.g.,* Federated Hermes Comment Letter I; Federated Hermes Board Comment Letter; Cato Inst. Comment Letter.

discretion could provide directors with additional liquidity management tools in times of market stress.[574] Another of these commenters suggested that boards should be given maximum discretion as to the fund's design and operation, including the discretion to implement redemption gates.[575]

Four factors may mitigate these economic costs. First, no money market fund imposed a gate under the rule during the market stress of 2020, and investors exhibited anticipatory redemptions when funds approached the 30% weekly liquid threshold for the potential imposition of gates. In light of these factors, money market funds may be unlikely to impose redemption gates outside of fund liquidation, even if we retained a redemption gate provision in rule 2a–7. As discussed in section II.A, the possibility that a money market fund would impose redemption gates may influence investment and redemption decisions, which could trigger runs.[576]

Second, the final rule includes a liquidity fee framework, encompassing mandatory and discretionary liquidity fees, as discussed in greater detail in section I and section II.B, but an amended framework where the imposition of fees is not tied to weekly liquid assets. The final rule includes both a discretionary fee framework[577] and a mandatory liquidity fee framework. Mandatory liquidity fees will be tied to a fund's same-day net redemptions, and funds will be able to assess discretionary liquidity fees, as discussed in section II.B. As discussed above, we believe that the final rule will provide more efficient tools for managing liquidity risk than the current baseline approach tying the potential imposition of fees to weekly liquid asset thresholds while reducing incentives for strategic redemptions. Moreover, increases to daily and weekly liquidity thresholds may increase fund liquidity buffers that can be used to manage liquidity costs of redemptions.

Third, money market funds will continue to be able to suspend redemptions under rule 22e–3 in anticipation of fund liquidation. Specifically, a money market fund will be able to suspend redemptions if its weekly liquid assets decline below 10% or, in the case of a government or retail money market fund, if its market-based price has deviated or is likely to deviate from its stable price, and in each case if the board also approves liquidation of the fund.[578] Thus, money market funds will still have access to a form of gating during large liquidity shocks in connection with a fund liquidation.

Fourth, as a result of the run dynamics described above, the tie between weekly liquid assets and the potential imposition of fees and gates may have contributed to incentives for money market fund managers to preserve their weekly liquid assets during liquidity stress, rather than using them to meet redemptions.[579] Therefore, the tie between weekly liquid assets and the possibility of fees and gates may magnify liquidity stress because it incentivizes money market funds to sell less-liquid assets with higher liquidity costs rather than absorb redemptions out of liquid assets. Thus, the removal of gates under rule 2a–7 and the tie between weekly liquid asset thresholds and the imposition of liquidity fees may reduce run risk and liquidity externalities in money market funds.

2. Raised Liquidity Requirements

a. Benefits

The final amendments increasing daily and weekly liquid asset requirements to 25% and 50% respectively may reduce run risk in money market funds. Commenters generally supported increasing the minimum daily and weekly liquidity requirements for money market funds, and some commenters supported the final thresholds being adopted.[580]

As discussed in the Proposing Release, early redemptions can deplete a fund's daily or weekly liquid assets, which reduces liquidity of the remainder of the fund's portfolio and increases the risk that a fund may need to sell less-liquid assets into a stressed market. Higher levels of daily and weekly liquid assets in a fund may reduce trading costs and the first-mover advantage during a wave of redemptions, potentially dis-incentivizing runs. When money market funds experience runs, funds with higher daily and weekly liquid assets may experience lower liquidity costs as they may be more likely to be able to use their liquid assets to meet redemptions rather than be forced to sell assets during liquidity stress.[581] In the open-end fund context, some research shows that fund illiquidity can contribute to run dynamics, as discussed in section IV.B.1.c. Other work shows that less-liquid open-end bond funds suffered more severe outflows during the COVID–19 crisis than liquid funds, and that less-liquid funds experienced redemptions well before more-liquid funds.[582] Other research shows that runs were more likely in less liquid funds for both U.S. and European institutional prime money market funds.[583]

A number of commenters indicated that raised liquidity requirements are critical to improving the resilience of money market funds in periods of market stress, as higher amounts of liquidity allow funds to manage through periods of higher redemptions and delay the point at which funds must access the secondary market to generate liquidity.[584] We continue to believe that increases in minimum liquidity requirements may help funds absorb redemptions and reduce the likelihood that funds need to sell portfolio securities during periods of market stress. This may enhance the resilience of money market funds in times of stress and may reduce the potential effect of redemptions from money market funds on short-term funding markets during times of stress. As discussed in the Proposing Release, there may be varying interpretations of the effects of fund outflows in March 2020 on the prices of assets held by money market funds and, thus, the degree to which the liquidity requirements may reduce the transaction costs and losses money market funds would face when selling portfolio securities into stressed markets. One commenter indicated that the proposal relied on a false assumption that all redemptions should be met using weekly liquid assets.[585]

[574] *See, e.g.,* Federated Hermes Comment Letter I. As discussed in section II and in section IV.C.4 below, the final rule would include a discretionary liquidity fee framework that affected money market funds could employ in times of stress.

[575] *See* Cato Inst. Comment Letter.

[576] *See, e.g.,* State Street Comment Letter.

[577] The Commission received comment that liquidity fees are one of the tools that, if fully discretionary, could be very valuable to money market funds in future stressed markets. *See, e.g.,* Federated Hermes Comment Letter I.

[578] *See* 17 CFR 270.22e–3.

[579] *See, e.g.,* Federated Hermes Comment Letter I.

[580] *See, e.g.,* Fidelity Comment Letter; Schwab Comment Letter; Vanguard Comment Letter; CCMR Comment Letter; Americans for Financial Reform Comment Letter; Better Markets Comment Letter. *See also* Prof. Hanson *et al.* Comment Letter; Systemic Risk Council Comment Letter (suggesting that the proposed liquidity thresholds may be too low).

[581] *See* Prime MMFs at the Onset of the Pandemic Report, *supra* note 41, at 4. According to Form N–MFP filings, no prime money market fund reported daily liquid assets declining below the 10% threshold in Mar. 2020.

[582] *See* Antonio Falato et al., *Financial Fragility in the COVID–19 Crisis: The Case of Investment Funds in Corporate Bond Markets,* 123 J. Monetary Econ. 35, 35–52 (2021).

[583] *See* Cipriani, Marco and Gabriele La Spada, *Sophisticated and Unsophisticated Runs.* FRB of New York Staff Report No. 956 (2020). *See also* Anadu, Kenechukwu et al., *The Money Market Mutual Fund Liquidity Facility,* FRB of New York Staff Report No. 980. (2021).

[584] *See, e.g.,* Systemic Risk Council Comment Letter; Fidelity Comment Letter; Schwab Comment Letter; Vanguard Comment Letter.

[585] *See* Federated Hermes Comment Letter I.

While funds may sell other securities to meet redemptions during times of stress, selling portfolio securities into stressed markets is not only costly, but also might not always be feasible during significant stress events that impair the ability of dealers to supply such liquidity.[586] The Commission continues to believe that increased liquidity requirements may enhance the ability of funds to meet large redemptions and reduce the dilution of remaining fund shareholders which will protect investors, particularly in times of stress.

Some commenters indicated that increases in the weekly liquid asset threshold would not necessarily result in enhanced money market fund liquidity because fund managers would treat a fund's liquid assets as a regulatory minimum and not use them to fulfill redemptions.[587] Funds may, indeed, choose between drawing down on daily or weekly liquid assets and selling less liquid assets in distressed markets to meet redemptions. As discussed above, the final rule removes the tie between weekly liquid assets and the potential imposition of redemption fees and gates. As discussed in the Proposing Release, before the introduction of fees and gates in the 2014 amendments, the only consequence to a money market fund of having the percentage of its weekly liquid assets fall below the 30% threshold was that the fund could not acquire any security other than a weekly liquid asset until its investments were above the 30% threshold. As a result, funds were more comfortable using their weekly liquid assets and dropping below the 30% threshold.[588] For example, at the peak of the Eurozone sovereign crises in the summer of 2011 the lowest reported weekly liquid asset value was approximately 5%.[589] In combination with the elimination of the tie between weekly liquid assets and potential imposition of liquidity fees as well as the elimination of redemption gates, the liquidity requirements may similarly increase the reliance of money market funds on daily and weekly liquid assets in meeting redemptions.

The Commission received comment that a prescriptive regulatory minimum liquidity mandate may offer few benefits because funds have a current obligation to hold sufficient liquidity to meet reasonably foreseeable shareholder redemptions and that properly considered know your customer requirements (*e.g.,* investor type and concentration) are adequate.[590] As discussed in section II.C.1, this current obligation may not be sufficient, since investors have unpredictable cash flow needs that are exacerbated in stress events, markets can rapidly and unforeseeably become illiquid during stress events, and requiring an appropriate level of liquidity at all times may be more effective than waiting until the stress event.

The Commission has also received comments that the removal of the tie between weekly liquid assets and gates and fees would have been sufficient, and that other amendments are unnecessary.[591] In general, investors may have cash needs that can be hard to predict for investors, and even more so for fund managers.[592] Moreover, we understand that large scale redemptions akin to those experienced by some funds in March 2020 are rare, and estimating the risk of such rare and large scale redemptions is inherently difficult. Finally, because dilution costs are borne by remaining investors and not money market funds, funds do not bear the cost of liquidity externalities that money market fund liquidity management practices may impose on market participants transacting in the same asset classes. We continue to believe that there are benefits to increased liquidity requirements. As discussed in greater detail below, we also believe that the final liquidity fee framework would give rise to additional benefits by reducing liquidity externalities of redemptions that can contribute to run incentives and by seeking to ensure that the costs stemming from redemptions in stressed market conditions are more fairly allocated to redeeming investors.

We acknowledge that, as discussed in the Proposing Release, the anticipated benefits of the final rule may be partly reduced to the extent that money market funds already voluntarily hold daily and weekly liquid assets in excess of the regulatory minimum thresholds due to other regulatory obligations or prevailing market conditions. For example, the asset weighted average daily and weekly liquid assets for publicly offered institutional prime money market funds between October 2016 and February 2020 was 33% and 48% respectively.[593] After the peak volatility in March 2020, money market funds generally increased their daily and weekly liquidity, initially to meet further redemptions and subsequently to take advantage of rising interest rates since March 2022. Consequently, the asset weighted average daily and weekly liquid assets for publicly offered institutional prime money market funds rose to 43% and 56% respectively by March 2023.[594] Additionally, the distributions of daily and weekly liquid assets have different amount of skewness, with approximately 45% of publicly offered institutional prime funds holding below average (43%) in daily liquid assets and 40% of funds holding below average (less than 56%) in weekly liquid assets. As a result, fewer prime funds may be affected by the higher daily liquid asset threshold than the higher weekly liquid asset threshold. Specifically, as of March 31, 2023, approximately 8% of all prime funds were below the 25% daily liquid asset threshold and approximately 20% of all prime funds were below the 50% weekly liquid asset threshold. Out of all public institutional prime funds, 8% were below the final daily liquid asset threshold and 18% were below the weekly liquid asset threshold. This may reduce both costs and benefits of the final amendments against the current regulatory baseline.

We have received comment that the proposed increases in liquidity requirements rely on false assumptions, including the assumption that failure of a single money market fund to ensure proper liquidity will lead to a run impacting all money market funds because transparency about liquidity levels of different funds can prevent or limit contagion.[595] Daily and weekly liquid assets of money market funds are, indeed, publicly disclosed under the current baseline, and this baseline reduces spillovers of run risk on more liquid money market funds. However, in the event of a run on a money market fund with lower liquidity buffers, investors may also optimally seek to redeem out of funds that are similar to the fund experiencing a run (in their portfolio exposures, liquidity characteristics, or institutional

[586] *See, e.g.,* ICI Comment Letter, BlackRock Comment Letter.

[587] *See, e.g.,* SIFMA AMG Comment Letter; BlackRock Comment Letter.

[588] *See, e.g.,* Federated Hermes Comment Letter I (citing to ICI data and stating that ''even before the linkage was introduced, funds utilized their weekly liquid assets as necessary and then in accordance with the rule procured only weekly liquid assets until the regulatory thresholds were once again met'').

[589] 87 FR 7300.

[590] *See, e.g.,* Federated Hermes Comment Letter I; Sen. Toomey Comment Letter.

[591] *See, e.g.,* Federated Hermes Comment Letter I.

[592] *See* HSBC Comment Letter.

[593] Averages were calculated by dividing the aggregate amount of daily (weekly) liquid assets from all funds by the aggregated amount of assets from all funds.

[594] According to one commenter, between 2010 and 2021, institutional prime money market funds held, on average, 45% in weekly liquid assets, and retail prime money market funds held, on average, 42% in weekly liquid assets. *See* ICI Comment Letter.

[595] *See, e.g.,* Federated Hermes Comment Letter I.

clientele).[596] Higher liquidity requirements may reduce such spillovers of run risk across funds.

To the degree that raised liquidity requirements reduce run risk in money market funds, they may enhance the resilience of affected funds and reduce the risk that money market funds rely on government backstops. Moreover, this may benefit investors to the degree that increasing the liquidity of money market fund portfolios would allow funds to meet large redemptions from liquidity buffers more easily. For example, after the March 2020 market dislocation, some prime money market funds voluntarily shifted their portfolios by moving out of longer maturity commercial paper and certificates of deposit in favor of more liquid Treasuries, allowing them to meet any future redemptions better. Raising liquidity thresholds may have a similar benefit.

The magnitude of the above economic benefits is likely to depend on the way in which money market funds respond to the final amendments. Specifically, some affected money market funds (*i.e.,* money market funds with less than 25% in daily and 50% in weekly liquid assets) may react to the final amendments by increasing the maturity of the remainder of their portfolios [597] (within the constraints on the maturity and weighted average life of the assets they hold), potentially reducing their liquidity to the extent that it is tied to maturity.

b. Costs

The final amendments will impose indirect costs on money market funds, investors, and issuers. Because less liquid assets are more likely to yield higher returns in the form of a liquidity premium,[598] to the degree that the amendments improve the liquidity of money market fund portfolios, it may lower expected returns of those funds to investors. Thus, an increase in weekly liquid assets may decrease money market fund yields and make them less attractive to some investors [599] and may reduce entry.[600] One commenter estimated that the proposed amendments will narrow the spread in yield between prime and government money market funds to less than 10 basis points.[601] We do not agree that this would necessarily be the case. Notably, any changes to such yield spread would vary depending on the degree to which some money market funds may choose to extend the maturities of their assets that do not fall into the weekly liquid asset category [602] (while staying under the regulatory caps on portfolio weighted average maturity and weighted average life) in response to the amendments, as well as on the prevailing interest rate environment and the steepness of the yield curve that reflects interest rates across maturities.

Reduced investor demand may lead to a decrease in the size of assets under management of affected money market funds and the wholesale funding liquidity they provide to other market participants. Investors that prefer to use money market funds as a cash management tool, giving them the ability to preserve the value of their investments and receive a small yield, may move out of prime money market funds and into government money market funds which deliver lower yields, but have lower risk to the value of the investment.[603] At the same time, investors reaching for yield may move to non-money market fund alternatives, including more opaque or less regulated investment products.[604] Moreover, to the degree that some investors view money market funds as cash equivalents, this amendment may result in better matching of investors to funds that meet their risk tolerance and yield expectations, mitigating the above costs.

The final amendments may require some affected funds to increase their daily liquid assets or weekly liquid assets. However, as of March 2023, an average institutional prime fund had 54.9% of assets in daily liquid assets and an average retail prime fund had 50.5% of assets in daily liquid assets; similarly, institutional prime funds had an average of 67.9% in weekly liquid assets and retail prime funds averaged 61.5% in weekly liquid assets.[605] As can be seen from Table 5 below, we understand that many funds are already in compliance or close to compliance with the final liquidity requirements under the current baseline, mitigating some of the above costs (and benefits) of the final amendments.

TABLE 5—DISTRIBUTION OF DAILY LIQUID ASSETS (DLA) AND WEEKLY LIQUID ASSETS (WLA) BY FUND TYPE, AS OF MARCH 2023

%-ile	Prime institutional DLA (%)	Prime retail DLA (%)	Prime institutional WLA (%)	Prime retail WLA (%)
Min	20.7	15.2	37.5	34.9
10th	28.8	22.1	43.9	42.2
25th	40.1	30.4	52.6	47.4
50th	47.3	43.9	58.7	57.1
75th	57.2	50.9	67.7	60.3
90th	90.3	58.0	92.3	72.9

[596] *See* Proposing Release, *supra* note 5, at Table 2 and accompanying text (discussing outflows from money market funds with different fund characteristics).

[597] *See, e.g.,* Federated Hermes Comment Letter I. Notably, longer maturity of portfolio assets does not always imply lower liquidity. For example, the liquidity stress in 2020 was so severe that commercial paper across a variety of maturities became illiquid.

[598] *See, e.g.,* Lee, Kuan-Hui, *The World Price of Liquidity Risk,* 99 J. Fin. Econ. 136, 136–161 (2011). *See also* Acharya, Viral, and Lasse Pedersen, *Asset Pricing with Liquidity Risk,* 77 J. Fin. Econ. 375, 375–410 (2005). *See also* Lubos Pastor & Robert Stambaugh, *Liquidity Risk and Expected Stock Returns,* 111 J. Polit. Econ. 642, 642–685 (2003).

[599] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; BlackRock Comment Letter; Federated Hermes Comment Letter I; Dechert Comment Letter; Americans for Tax Reform Comment Letter.

[600] For example, one commenter that closed prime and tax-exempt money market funds in 2020 asserted that the regulatory burdens, including increased liquidity requirements, make it unlikely that they will reenter the prime money market fund market. *See* Northern Trust. For a discussion of the potential effects of the final amendments on competition, efficiency, and capital formation, see section IV.E.

[601] *See* Federated Hermes Comment Letter I.

[602] *Id.*

[603] Government money market funds must invest 99.5% or more of their assets in cash, government securities, and/or repurchase agreements that are collateralized fully.

[604] *See, e.g.,* Federated Hermes Comment Letter I; ICI Comment Letter; Dechert Comment Letter; CCMR Comment Letter.

[605] *See* Money Market Fund Statistics, Division of Investment Management Analytics Office, 4/25/2023, *available at https://www.sec.gov/files/mmf-statistics-2023-03.pdf.* The weighted average values equal the aggregated daily or weekly liquid assets divided by the total assets of the funds.

TABLE 5—DISTRIBUTION OF DAILY LIQUID ASSETS (DLA) AND WEEKLY LIQUID ASSETS (WLA) BY FUND TYPE, AS OF MARCH 2023—Continued

%-ile	Prime institutional DLA (%)	Prime retail DLA (%)	Prime institutional WLA (%)	Prime retail WLA (%)
Max	100.0	67.5	100.0	76.0

Source: Form N–MFP filings.

Nevertheless, to the extent that some funds have to increase their liquidity levels to comply with the final amendments, these amendments may increase the demand of money market funds for liquid assets, such as repos. To the degree that this results in a decline in yield spreads between prime and government money market funds, some investments may flow into government money market funds or, alternatively, banking entities. To the extent that the liquidity in overnight funding markets may flow to banking entities, and through them to leveraged market participants, such as hedge funds, the amendments may reduce the liquidity risk borne by some money market funds, but may result in a concentration of risk taking among leveraged and less regulated market participants. At the same time, investors reaching for yield may flow out of money market funds and into other more speculative vehicles, unregulated and less transparent products.

The final amendments may also impose indirect costs on issuers. Specifically, money market funds are holders of commercial paper and certificates of deposit, as described in the baseline,[606] and most of the commercial paper they hold is issued by banks, including foreign bank organizations.[607] Therefore, issuers of commercial paper and certificates of deposit are likely to experience incrementally reduced demand for their securities from money market funds, particularly demand for debt that would fall outside of the weekly liquid assets category,[608] however any such effects may be mitigated by the factors discussed below. We have received comment that raised liquidity requirements may reduce issuers' access to capital and increase the cost of capital, negatively affecting capital formation in commercial paper and certificates of deposit.[609] Issuers may respond to such changes by reducing their issuance of commercial paper and certificates of deposit and increasing issuance of longer-term debt. In a somewhat analogous setting, some research explores the effects of the 2014 money market fund reforms, which may have resulted in asset outflows from prime money market funds into government money market funds and affected funding for large foreign banking organizations in the U.S., on bank business models.[610] One paper found that banks were able to replace some of the lost funding, but reduced arbitrage positions that relied on unsecured funding, rather than reducing lending.[611] Another paper found that money market fund reforms led to an increase in the relative share of lending in bank assets and concludes that reduction in unstable funding can discourage bank investments in illiquid assets.[612] Other research examined the effects of decreased holdings of European bank debt by money market funds during the Eurozone sovereign crisis in 2011. One paper found that reduced wholesale dollar funding from money market funds during this period led to a sharp reduction in dollar lending by Eurozone banks relative to euro lending, which reduced the borrowing ability of firms reliant on Eurozone banks prior to the sovereign debt crisis.[613]

These potential costs of the final amendment to issuers may be mitigated by three potential factors. First, as discussed above and in the proposal, money market funds may respond to a higher weekly liquid asset threshold by increasing the maturity and liquidity risk in their non-weekly liquid asset portfolio allocations. This effect may dampen the adverse demand shock for commercial paper, but also dampen the reductions in the portfolio risk of affected money market funds. However, for the past several years prime money market funds have maintained levels of liquidity that are close to or that exceed the final thresholds, without offsetting the low yield of shorter-term securities with significant holdings of riskier longer-term securities (''barbelling'').[614] Second, as discussed in the proposal, money market funds hold less than a quarter of outstanding commercial paper, which could limit the impact of the final amendments on commercial paper issuers and markets. If money market funds pull back from commercial paper markets and commercial paper prices decrease as a result, other investors may be attracted to commercial paper, absorbing some of the newly available supply, as observed after the 2016 reforms. Third, the amendments to liquidity requirements may increase some money market funds' liquidity buffers, which may enable such funds to meet large redemptions from liquid assets and reduce the need to sell commercial paper to meet large redemptions during stress periods.[615] This may enhance the stability of commercial paper markets during times of market stress—an effect that is also limited by the relative size of money

[606] To the degree that some money market funds hold significant quantities of commercial paper issued by foreign banks seeking dollar funding, such issuer costs may have a greater effect on foreign issuers.

[607] *See* ICI MMF Report, *supra* note 542.

[608] *See, e.g.,* Allen Kyle, et al., *Money Market Reforms: The Effect on the Commercial Paper Market,* 154 J. Banking and Finance 106947 (2023).

[609] *See, e.g.,* ICI Comment Letter; Dechert Comment Letter; CCMR Comment Letter.

[610] These outflows around the Oct. 2016 compliance date for the 2014 reforms, for example, led to reduced money market funds purchases of commercial paper with other entities like mutual funds eventually picking up the shortfall and an approximately 30 basis point spike in 90-day financial commercial paper rates for about three months.

[611] *See, e.g.,* Alyssa Anderson et al., *Arbitrage Capital of Global Banks* (Finance and Economics Discussion Series 2021–032. Washington: Board of Governors of the Federal Reserve System, May 2021), *available at https://doi.org/10.17016/FEDS.2021.032.*

[612] *See* Thomas Flanagan, *Funding Stability and Bank Liquidity* (Working Paper, Mar. 2020), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3555346* (retrieved from SSRN Elsevier database).

[613] *See* Victoria Ivashina et al., *Dollar Funding and the Lending Behavior of Global Banks,* 130 Q.J. Econ. 1241, 1241–1281 (2015).

[614] Fund incentives to barbell may be stronger in higher interest rate environments or when the yield curve for short-term securities is steeper.

[615] *See, e.g.,* Fidelity Comment Letter (stating that higher weekly liquid assets allowed the commenter to avoid selling commercial paper into frozen markets in Mar. 2020).

market fund holdings of commercial paper.

3. Stress Testing Requirements

a. Benefits

The final amendments will also alter stress testing requirements for money market funds. Under the baseline, money market funds are required to stress test their ability to maintain 10% weekly liquid assets under the specified hypothetical events described in rule 2a–7 since breach of the 10% weekly liquid asset threshold would impose a default liquidity fee. The amendments will eliminate the default liquidity fee triggered by the 10% threshold and the corresponding stress testing requirement around the 10% weekly liquid asset threshold. Instead, the amendments will require funds to determine the minimum level of liquidity they seek to maintain during stress periods and to test whether they are able to maintain sufficient minimum liquidity under such specified hypothetical events, among other requirements. We believe that the final stress-testing approach will allow for better tailoring of stress-testing results to individual fund characteristics, which may enhance the manager and the board's understanding of the risks to the fund portfolio under extreme and plausible market conditions, as well as enhance liquidity management and the ability of funds to meet redemptions.

Most commenters generally supported the proposed amendments to the liquidity stress testing requirements,[616] but one commenter supported the existing stress testing framework.[617] Different money market funds have different optimum levels of liquidity under times of stress. Therefore, the final amendments to stress testing requirements reflect our continuing belief that many factors influence optimum levels of minimum liquidity during stress periods, including the type of money market fund, investor concentration, investor composition, and historical distribution of redemption activity under stress. As such, we continue to believe that a more principles-based approach may improve the utility of stress testing as part of fund liquidity management. Specifically, the final amendments may allow funds to tailor their stress testing to the fund's relevant factors, which may enhance the fund managers' and the board's understanding of the risks to the fund portfolio under extreme and plausible market conditions, as well as enhancing liquidity management and the funds' ability to meet redemptions.

b. Costs

Amendments to fund stress testing requirements may impose direct and indirect costs. Under the final amendments, a fund will be required to determine the minimum level of liquidity it seeks to maintain during stress periods, identify that liquidity level in its written stress testing procedures, periodically test its ability to maintain such liquidity level, and provide the fund's board with a report on the results of the testing.

As a baseline matter, funds are already subject to stress testing requirements, which may reduce some of the burdens of the final amendments. Money market funds have also established written stress testing procedures to comply with existing stress testing requirements and report the results of the testing to the board. Thus, such funds may experience costs related to altering existing stress testing procedures as the final amendments would move from bright-line requirements to a principles based approach, as well as costs related to board reporting and recordkeeping.[618]

In addition, to the degree that funds do not have sufficient incentives to manage liquidity to meet redemptions, they may choose insufficiently low minimum levels of liquidity for stress testing, which may reduce the value of stress testing and corresponding reporting for board oversight of fund liquidity risk. However, funds may have significant reputational incentives to manage liquidity costs: incentives that have, for example, led many funds to voluntarily provide sponsor support.

While most commenters generally supported the principles-based approach, one commenter opposed the change, stating that stress testing was not effective in March of 2020 as markets were frozen.[619] The final stress-testing approach would allow for better tailoring of stress-testing results to individual fund characteristics, which may enhance the manager and the board's understanding of the risks to the fund portfolio under extreme and plausible market conditions, as well as enhance liquidity management and the ability of funds to meet redemptions.

4. Liquidity Fees

a. Benefits and Costs of the Mandatory Liquidity Fee Amendments

i. Benefits

As discussed in section II, the final amendments include both mandatory and discretionary liquidity fee provisions intended to reduce liquidity externalities in money market funds. Specifically, as discussed in the baseline, money market fund investors transacting their shares typically do not incur the costs associated with their transaction activity. Instead, these liquidity costs may be borne by shareholders remaining in the fund, which may contribute to a first-mover advantage and run risk.[620] Moreover, as discussed in the baseline, liquidity management by money market funds may impose negative externalities on all participants investing in the same asset classes, and this effect may be magnified if there are large-scale net redemptions during times of market stress. As discussed in further detail below, we anticipate the final liquidity fee framework will reduce the negative externalities that redeemers impose on non-transacting investors, protect non-transacting investors from dilution, and reduce run risk in money market funds.

The final liquidity fee framework will require institutional prime and institutional tax-exempt money market funds that experience daily net redemptions in excess of 5% of their net assets to assess liquidity fees so as to charge redeeming shareholders for the liquidity costs they impose on the fund. Specifically, the fee amount would reflect the fund's good faith estimate of the spread, other transaction costs, as well as market impact costs the fund would incur if it were to sell a pro rata amount (a vertical slice) of each security in its portfolio to satisfy the amount of net redemptions. The Commission anticipates that, under normal market conditions, it is likely that the fee amount would generally be *de minimis,* since money market funds already hold relatively high quality and liquid investments and will hold even higher levels of liquidity under the final amendments, which may reduce liquidity costs associated with a vertical slice assumption. In the event of *de minimis* costs (costs that are less than 0.01% of the value of the shares redeemed), a fund will not be required to impose a liquidity fee. If the fund is

[616] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; T. Rowe Comment Letter; Schwab Comment Letter.

[617] *See* Federated Hermes Comment Letter I; Federated Hermes Comment Letter IV.

[618] The Commission estimates one-time costs of $125,832 for all affected funds to amend stress testing procedures, and these costs have been amortized over three years in section V.B for purposes of the PRA.

[619] *See* Federated Hermes Comment Letter I.

[620] As discussed in the baseline, dilution costs most directly impact shareholders in floating NAV funds through changes to the NAV. In stable NAV funds, dilution costs can make the fund more likely to breach the $1 share price if dilution costs are large.

not able to make a good faith estimate of its liquidity costs based on the sale of a vertical slice, the fund will use a default liquidity fee, as discussed in section II.B.2. In addition, the final amendments will allow affected money market funds to assess discretionary liquidity fees if the board or its delegate determines that fees would be in the best interest of the fund.

We anticipate the final liquidity fee framework will reduce dilution of non-redeeming shareholders in the face of net redemptions. As discussed in greater detail in section IV.C.4.b.i below, redeeming investors will bear the fee. As a result, it may dampen any first-mover advantage, thus reducing the incentive to redeem early, the resulting fund outflows, and dilution resulting from these outflows. By reducing dilution, liquidity fees are also expected to protect investors that remain in a fund, for instance, during periods of high net redemptions. By protecting non-transacting investors from dilution costs of redemptions, the liquidity fee framework may also incentivize investors to stay in funds experiencing large redemptions, reducing run risk. Moreover, the liquidity fee framework may attract some investors (such as investors that redeem infrequently) to prime and tax-exempt money market funds.

The above economic benefits of liquidity fees may be influenced by several factors. First, under the final amendments, liquidity fees are triggered by same-day net redemptions—a threshold that we believe makes the final liquidity fee framework less susceptible to run risk than fees conditioned on weekly liquid assets. In general, if investors expect an indicator that triggers the fee (*e.g.,* weekly liquid assets or same-day net redemptions) to be below the fee threshold on a given day, but above the fee threshold on subsequent days, they are incentivized to redeem early, before the liquidity fee applies. Therefore, the ability of investors to accurately forecast an indicator that triggers the fee over subsequent days may give rise to incentives for strategic redemptions. A day of relatively low weekly liquid assets combined with significant redemptions may be more likely than otherwise to be followed by a day with even lower weekly liquid assets, due to the need to absorb the trading costs of redemptions. This makes declines in weekly liquid assets more forecastable. By contrast, changes in net redemptions from one day to the next are more difficult to predict accurately because net flows aggregate orders from a large number of investors that may be redeeming and subscribing based on their cash needs, interest rate expectations, and risk tolerances, among other things. Investors may still seek to redeem during a redemption wave based on observation of prior days' net redemptions out of the fund or similar funds. However, such anticipatory redemptions run the risk that a liquidity fee would be applied on that day. In such a scenario, however, to the degree that fees accurately reflect liquidity costs, investors know that they would not be diluted if they stay in the fund, reducing their incentives to exit in anticipation of the application of a liquidity fee and corresponding run risk.

Second, under normal market conditions, investor dilution may not be significant and liquidity fees may not be charged or the fees charged may be small. However, the final rule is intended to address the dilution that can occur when a money market fund experiences large net redemptions and is not intended to result in significant fees unless there is significant net redemption activity leading to large liquidity costs, such as in times of stress in short-term funding market. As discussed in section II, funds are expected to charge larger fees in times of stress, when the benefits of protecting investors from dilution are higher.

Third, as discussed in greater detail in section II, the final liquidity fee framework will require affected funds to calculate fees based on, among other things, an assessment of the market impacts of selling a vertical slice of the fund portfolio. To the degree that the costs of selling a pro rata amount of each portfolio security cannot be estimated in good faith and supported by data, funds will use the default liquidity fee prescribed in the rule. This default liquidity fee is a proxy for true liquidity costs of redemptions in times of stress,[621] and may over-estimate or under-estimate the liquidity costs of different funds. In addition, differences in fund portfolio composition may allow some funds to estimate liquidity fees under stress, while other affected funds may be unable to do so and may simply charge the default fee. This may decrease the ex-ante benefit of increased comparability of liquidity costs across affected money market funds.

Fourth, the final liquidity fee framework addresses only the portion of dilution costs related to trading costs and market impacts, and will not address other sources of dilution discussed in section IV.B. Thus, the requirement may only partly reduce the dilution costs that redemptions impose on non-transacting investors and the related liquidity externalities.

The final amendments will require affected funds to implement liquidity fees when faced with redemptions in excess of the 5% threshold. While money market funds may have reputational incentives to manage liquidity to meet redemptions,[622] affected funds also face collective action problems and disincentives stemming from investor behavior. Specifically, to the degree that institutional investors may use institutional prime and institutional tax-exempt funds for cash management and their flows are sensitive to liquidity fees, funds may be dis-incentivized to implement liquidity fees until the fund is under severe and prolonged stress. For example, even if all institutional money market funds recognized the benefits of charging redeeming investors for the liquidity costs of redemptions, no fund may be incentivized to be the first to adopt such an approach as a result of the collective action problem. By making liquidity fees in the face of large outflows mandatory, rather than optional, the final amendments are intended to ensure that funds assess liquidity fees to capture the dilution costs of net redemptions. Moreover, it may be suboptimal for an individual money market fund to implement liquidity fees frequently under normal market conditions, as the operational costs of doing so are immediate and certain, while the benefits are largest in relatively rare times of liquidity stress. The final rule's application of liquidity fees by all institutional prime and institutional tax-exempt funds faced with large outflows is intended to ensure that liquidity fees are deployed in times of stress by all affected funds, protecting remaining fund investors from dilution costs when liquidity costs are highest.

The Commission has also received comments that the removal of the tie between weekly liquid assets and gates and fees would have been sufficient, and that other amendments are unnecessary.[623] We note that for reasons

[621] As discussed elsewhere, to the degree that discounts experienced by ultra-short bond exchange traded funds in the peak market stress of March 2020 may serve as a proxy for liquidity costs of money market funds, the default liquidity fee is generally consistent with the range of money market fund liquidity costs during the same period.

[622] One commenter stated that a fund's board of independent directors would have reputational and legal incentives to apply a discretionary fee to prevent shareholder dilution regardless of whether other funds' boards apply fees. *See* Federated Hermes Comment Letter V.

[623] *See, e.g.,* Federated Hermes Comment Letter I; ICI Comment Letter.

discussed throughout, the Commission is adopting all of the amendments, which we believe can work in complementary ways to reduce liquidity externalities and run risk in money market funds, although each element of the final rule may have lower incremental benefits. The Commission has also received comments questioning whether any meaningful dilution occurs in money market funds.[624] For example, one commenter stated that, from their own data and industry experience, no dilution was actually experienced and that, if dilution occurred, it would have been observable in a declining NAV during the stressed period in which money market funds experienced net redemptions.[625] The Proposing Release documented declines in the distribution of money market fund NAVs during peak market stress of March 2020.[626] However, because investors can redeem in response to anticipated or realized NAV dips, it is difficult to disentangle such effects from the dilution that results from forced sales to meet redemptions. Moreover, dilution costs exist—and are borne by remaining investors—even if funds do not fully exhaust their liquidity buffers and experience NAV dips from forced sales, and anti-dilution mechanisms are intended to address dilution costs that stem from a fund's liquidity becoming depleted, rather than necessarily fully exhausted. Finally, we do not observe dilution costs that would have occurred in absence of the Federal Reserve's facilities that may have prevented substantial declines in fund NAVs from forced sales to meet redemptions.

Another commenter estimated the impact of swing pricing on its money market fund on March 16, 2020, and seemed to suggest that the impact would have been slightly more than 1 basis point.[627] Another commenter analyzed the size of a swing factor adjustment if a fund held 50% of its assets in weekly liquid assets and applied a 100-basis point upward move in market yield for all other holdings (a historically large move, according to the commenter) as a proxy of market impact. The commenter stated that, in this analysis, a fund's NAV would only move down by $0.0007.[628] Importantly, this comment addresses the hypothetical impacts of specific interest rate shocks (rather than, for example, large firm-specific or sector-wide credit shocks) and do not revalue the entire fund portfolio based on market impacts of the liquidation of a pro-rata slice of the fund portfolio using transaction or quotation data. While dealer accommodation may allow money market funds to transact at bid or mid prices under normal market conditions, historical bid and mid estimates from pricing vendors may not reflect prices at which money market funds are able to transact when markets are under stress.[629] In addition, evidence from the commercial paper market suggests that, during the liquidity stress of 2020, the commercial paper market exhibited a significant amount of stress reflected in spikes in the yield spread between commercial paper and Treasuries and in the commercial paper bid-ask spread, as can be seen in Figure 4. For example, bid-ask spreads of highly rated dealer-placed commercial paper reached between approximately 25 and 55 basis points at the height of the stress in March and April 2020 depending on maturity.[630] In addition, we are aware of research showing that ultra-short bond exchange traded funds exhibited significant NAV discounts during the peak of market stress in March 2020.[631] To the degree that ultra-short bonds may be somewhat comparable to the debt instruments held by money market funds, and to the extent that the magnitude of exchange traded fund discounts may proxy for liquidity costs of money market funds that hold similar assets, this could suggest nontrivial dilution costs during market stress.

[624] *See, e.g.,* Federated Hermes Comment Letter I; SIFMA AMG Comment Letter; Capital Group Comment Letter; JP Morgan Comment Letter; Fidelity Comment Letter.

[625] *See* Federated Hermes Comment Letter II.

[626] *See* 87 FR 7297.

[627] *See, e.g.,* Capital Group Comment Letter.

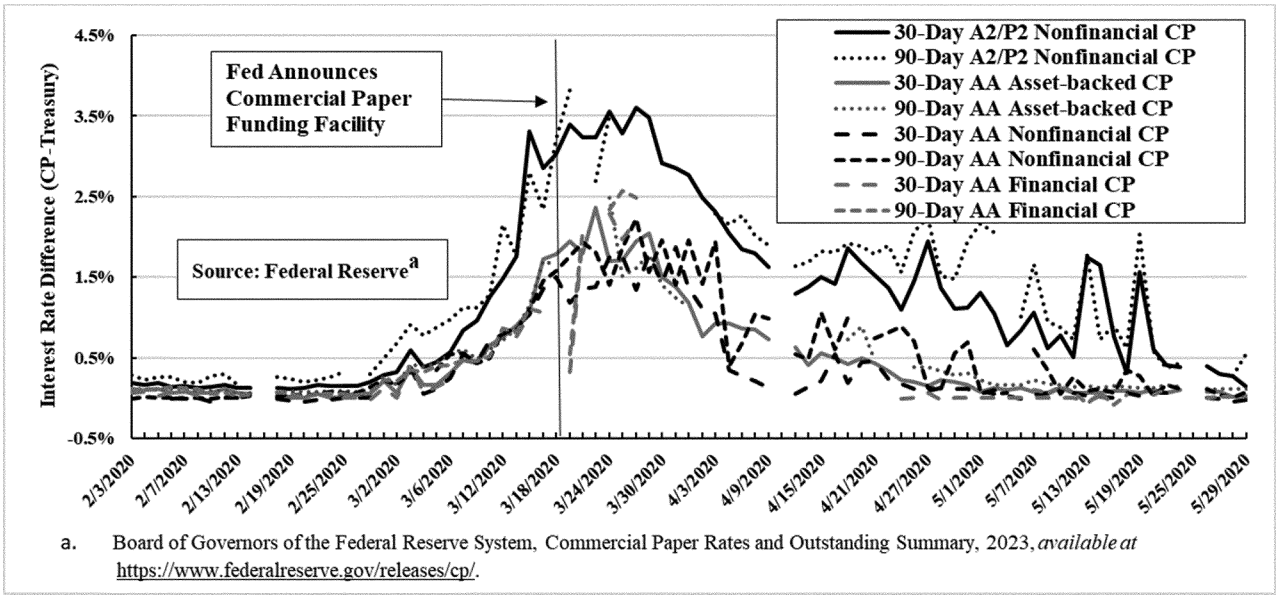
[628] *See* Fidelity Comment Letter (stating that if the fund had 30% WLA and the market impact factor was 150 basis points, the NAV would decline by $0.0014).

[629] For example, many dealers may not bid on certain issuer names altogether to avoid a flood of sell orders from prime money market funds and other short-term credit investors. *See, e.g.,* Blackrock Comment Letter.

[630] *See* Capital Advisors Group, *Institutional Cash Investments in the COVID–19 New Reality, available at http://www.capitaladvisors.com/wp-content/uploads/2020/05/Institutional-Cash-Investments-in-the-COVID-19-New-Reality.pdf.* The negative bid/ask spread seen during Mar. 2020 may reflect a dealer's willingness to bid on liquid CP and to sell more illiquid CP at a lower price.

[631] *See* Kenechukwu Anadu et al., *Swing Pricing Calibration: A Simple Thought Exercise Using ETF Pricing Dynamics to Infer Swing Factors for Mutual Funds* (SRA Note, Issue Number: 2022–06), *available at https://www.bostonfed.org/-/media/Documents/Workingpapers/PDF/2022/sra-note-2206.pdf.*

Figure 4—Differences Between Commercial Paper and Treasury Yields by Maturity and Type



a. Board of Governors of the Federal Reserve System, Commercial Paper Rates and Outstanding Summary, 2023, *available at* https://www.federalreserve.gov/releases/cp/.

Commercial paper is just one group of money market fund portfolio holdings, and data on certificates of deposit and municipal securities is scarce. Moreover, we do not have granular data about daily money market fund holdings and quotation data that would enable us to estimate the amount of dilution that could have been recaptured in March 2020 or the prevalence of other sources of dilution discussed in section IV.B. To the best of our knowledge, such data are not publicly available. In addition, order sizes, fund portfolio holdings, the liquidity management strategy used to meet redemptions, and execution quality may impact the precise dilution costs experienced by each fund.

However, from the above data on short-term commercial paper and ultra-short bond exchange traded funds, in times of stress in short-term funding markets, liquidity costs of money market funds can spike. To the degree that money market funds absorb redemptions out of liquid assets, and are unable to perfectly anticipate daily redemptions and ladder portfolio maturities accordingly, redemptions dilute investors remaining in the fund by reducing the amount of liquidity available to meet future redemptions. Moreover, the final rule would require funds to estimate market impact factors using the assumption of the sale of the pro-rata share of the fund portfolio holdings. Thus, had the final liquidity fee framework been in effect during market stress in March 2020, we believe that many affected money market funds would have charged liquidity fees on redemptions, thereby reducing dilution of non-transacting shareholders and the impact of redemptions on affected funds.

ii. Costs

Broadly, the final liquidity fee requirements may impose three groups of costs. First, as analyzed in section V, affected money market funds would bear reporting and recordkeeping burdens arising out of the final liquidity fee requirements.[632] For money market fund boards that delegate liquidity fee determinations to the fund's adviser or officer, funds would also have burdens associated with establishing board-approved written guidelines for determining the application and size of liquidity fees, as well as the burdens of periodic board oversight of the delegate's determinations. Money market funds generally already have playbooks or other written materials related to the circumstances in which a fund's board may consider liquidity fees under the current rule. Funds may update these materials to conform to the final rule's requirements. The costs of board oversight of the delegate may include costs of preparing materials in advance of board meetings to describe any instances in which the delegate determined to impose a fee, as well as the factors the delegate considered in determining to impose a fee and the size of the fee.

Second, affected money market funds may incur costs related to implementing an analytical framework required to implement the final liquidity fee requirements, including costs of estimating dilution under the vertical slice assumption. Section II discusses how affected money market funds may choose to comply with the vertical slice requirement. One commenter questioned the feasibility of estimating market impact using the vertical slice approach.[633] Another commenter estimated their initial costs of implementing all parts of the proposal at between $10 to $20 million, with $2 to $4 million in annual ongoing costs (including staffing and personnel costs, legal fees, printing and mailing costs and fees to custodians).[634] The commenter indicated that approximately two-thirds of these

[632] As discussed in section V.B, the Commission estimates the total annual costs attributable to the information collection requirements of the liquidity fee amendments under rule 2a–7 will be $1,228,659. This cost estimate includes both initial and ongoing costs with the former being amortized over three years. The estimated initial costs of the website disclosure amendments under rule 2a–7 is $84,966 for all affected funds, amortized over three years. As discussed in section V.E, the Commission estimates a total initial cost of updating disclosures to comply with the amendments to Form N–1A of $59,682 for all affected funds, amortized over three years. As discussed in section V.G, the Commission estimates a total annual cost of preserving records of liquidity fee computations of $97,347, which includes both internal and external costs.

[633] *See* ICI Comment Letter.

[634] *See* Federated Hermes Comment Letter I.

estimated costs would be necessary to implement the swing pricing, disclosures and negative interest rate aspects of the proposal. The commenter also indicated that these expenses will be somewhat larger for larger fund families and their services providers, and somewhat smaller for smaller fund families and their services providers, but will not vary exactly in proportion to the size of the money market fund family. As discussed above, the Commission is modifying its approach to the negative interest rate aspects as proposed, is scaling back some of the more costly parts of the disclosure requirements, and is adopting a liquidity fee framework (which we believe may be less costly) in lieu of the proposed swing pricing requirement. However, if costs of the liquidity fee framework are of a comparable order of magnitude to the costs of the proposed swing pricing requirement at the fund level, an estimate of the initial compliance costs of the final liquidity fee framework based on that commenter's assumptions may therefore be between $6.7 million and $13.4 million, with between $1.3 and $2.7 million in annual ongoing costs.[635] However, as discussed throughout the release, a number of commenters indicated that liquidity fees may be far less costly and operationally complex than the proposed swing pricing requirement,[636] and thus, these figures may overestimate the costs of the final liquidity fee framework.

Third, the liquidity fee amendments would require intermediaries and service providers (such as broker-dealers, registered investment advisers, retirement plan record-keepers and administrators, banks, other registered investment companies, and transfer agents) that receive flows directly to apply fees to investors' redemptions and submit the proceeds to the fund, which may increase operational complexity and cost for intermediaries. While intermediaries and service providers to non-government money market funds should be equipped to impose liquidity fees under the current regulatory baseline, the final amendments will likely result in more frequent application of fees than what is observed currently given that no money market funds have imposed liquidity fees under the current rule. As discussed in section II.B., there are also differences between the current liquidity fee framework and the new mandatory liquidity fee framework that may affect how intermediaries apply fees, such as the requirement to apply fees based on same day net redemptions, and the likelihood such fees would vary day to day under stressed conditions. As a result, intermediaries may need to develop or modify policies, procedures, and systems designed to apply fees to individual investors and submit liquidity fee proceeds to the fund. In addition, liquidity fees may require more coordination with a fund's intermediaries and service providers, since each of them needs to impose fees on an investor-by-investor basis, which may be more difficult with respect to omnibus accounts. Moreover, some funds may choose to develop or modify policies and procedures reasonably designed to ensure intermediaries are appropriately and fairly applying the fees. Finally, to determine the liquidity fee amount, funds would need to receive information from intermediaries about gross redemptions for a given day. To the degree that some intermediaries may currently provide only net flow information to funds, intermediaries may need to update their arrangements with funds to send the gross amount of redemptions in a timely manner. Due to the costs that the liquidity fee amendments may impose on intermediaries and distribution networks of affected funds, money market funds may alter their intermediary distribution contracts, networks, and flow aggregation practices.

The magnitude of such costs would depend on, among other things, intermediaries' current policies and procedures related to the imposition of liquidity fees under the current rule; future redemption patterns out of affected money market funds under normal conditions and under stress, and the liquidity costs thereof (which would affect how frequently fees would be applied under the final rule); how affected money market funds choose to structure their relationships with service providers and intermediaries; and the way in which affected funds may choose to alter their intermediary contracts, networks, and flow aggregation practices in response to the final rule. In the Proposing Release, the Commission was unable to quantify such burdens and costs and solicited comment and data that would inform this analysis. While commenters did not provide estimates or data that could inform estimates of such costs, a large number of commenters suggested that a liquidity fee framework would be far less costly and operationally complex than the proposed swing pricing requirement.[637]

The costs of the final liquidity fee amendments may be passed along in part or in full to institutional money market fund investors in the form of higher expense ratios or fees. In addition, to the degree that the final amendments result in liquidity fees being charged to redeemers (relative to the baseline of funds being able to assess the fees but not being required to assess them and never having assessed them), the final liquidity fee requirement will increase the variability of realized returns for redeeming investors in affected money market funds, particularly in times of market stress. Thus, these amendments may reduce demand of some investors for institutional prime and institutional tax-exempt money market funds. However, they may smooth NAV returns for non-redeeming investors as transactions costs would no longer detract from the fund NAV. Hence, as discussed above, the liquidity fee framework may also attract new investors, such as investors that tend to redeem infrequently, to prime and tax-exempt money market funds.

If the final amendments reduce investor demand in some funds, they would lead to a decrease in assets under management of these money market funds, thereby potentially reducing the wholesale funding liquidity they provide to other market participants. A reduction in the number of money market funds and/or the amount of money market fund assets under management as a result of the final liquidity fee requirements would have a greater negative impact on money market fund sponsors whose fund groups consist primarily of money market funds, as opposed to sponsors that offer a more diversified range of mutual funds or engage in other financial activities (*e.g.,* brokerage). However, the final amendments may also lead to an increase in demand for government money market funds, which

[635] These ranges correspond to two–thirds of the corresponding ranges provided by the commenter.

[636] *See, e.g.,* ICI Comment Letter; Invesco Comment Letter; SIFMA AMG Comment Letter; Federated Hermes Comment Letter I; Federated Hermes Comment Letter II; Invesco Comment Letter; Schwab Comment Letter; Morgan Stanley Comment Letter; JP Morgan Comment Letter; BlackRock Comment Letter; State Street Comment Letter; Western Asset Comment Letter; IIF Comment Letter; Allspring Funds Comment Letter; Dechert Comment Letter.

[637] *See, e.g.,* ICI Comment Letter; Invesco Comment Letter; SIFMA AMG Comment Letter; Federated Hermes Comment Letter I; Federated Hermes Comment Letter II; Invesco Comment Letter; Schwab Comment Letter; Morgan Stanley Comment Letter; JP Morgan Comment Letter; BlackRock Comment Letter; State Street Comment Letter; Western Asset Comment Letter; IIF Comment Letter; Allspring Funds Comment Letter; Dechert Comment Letter.

could dampen or offset the potential adverse effects of the final rule on the availability of short-term funding liquidity, and on fund sponsors whose fund groups consist primarily of government money market funds.

In addition, the liquidity fee framework may reduce the willingness of some investors to hold prime and tax-exempt money market funds due to the possibility of a liquidity fee being applied. Such investors may reallocate capital into, for example, government money market funds. If the final amendments result in a shift in assets under management out of prime and tax-exempt money market funds and into government money market funds, they may influence costs of capital for issuers, such as municipalities and corporate issuers due to the need to raise capital from, for example, bank and bond financing. While we cannot estimate the magnitude of such potential impacts under the final rule, in the swing pricing context, one commenter estimated that the shift of balances out of prime money market funds would result in lost income and higher borrowing costs of roughly 2% to 3% per annum on the aggregate amount of prime money market fund balances shifted to alternative forms of intermediation, such as banks.[638] Although swing pricing and liquidity fees can both charge redeeming investors for the liquidity costs they impose on a fund's non-redeeming investors, the final liquidity fee framework is tailored to reduce costs on funds and investors relative to the proposed swing pricing approach, as discussed in detail in sections II and IV.D, which may mitigate these effects.

Moreover, liquidity fees may increase the variability of realized returns of institutional investors especially during times of stress, which can reduce the attractiveness of such funds to such investors. Importantly, under the baseline, institutional funds experience NAV volatility and money market funds are already able to assess fees. Risk-averse investors that prefer to be able to redeem at NAV and without fees may have already shifted to government money market funds or bank accounts, for example, around the 2016 implementation of money market fund reforms. The final liquidity framework has been designed to mitigate these economic costs in several ways. First, the final liquidity fee requirements are tailored to the level of net redemptions. When daily net redemptions are low (at or below 5%), affected money market funds will not be required to assess liquidity fees.

Second, as discussed in section II.B.2, affected money market funds will not be required to assess liquidity fees if a calculated fee is less than 0.01% of the value of shares redeemed, even if daily net redemptions exceed the 5% threshold. Thus, under normal market conditions, affected money market funds will not need to assess liquidity fees if their estimated liquidity costs are *de minimis.*

Third, the 5% net redemption threshold for the application of mandatory liquidity fees will be applied on a daily basis, rather than on a pricing period basis as with the proposed swing pricing requirement. To the degree that affected money market funds may experience systematic intraday patterns of large redemptions and large subscriptions, this aspect of the final amendments may reduce the frequency with which funds must estimate liquidity costs, and the frequency with which intermediaries and service providers must assess and pass along the proceeds from liquidity fees.

Further, we recognize that, while not required, some funds may choose to reduce the number of NAV strikes they offer or no longer offer multiple NAV strikes for operational ease. As discussed in section II, funds and intermediaries may also develop other approaches to address this issue. Depending on a given fund's approach, a redeeming investor may experience a reduction in its access to liquidity relative to current practices. In addition, different approaches may have differing effects on investors or raise tax or other considerations. Overall, we believe it is unlikely that the mandatory liquidity fee would result in a redeeming investor being unable to access same-day liquidity.

The liquidity fee requirement may impose costs on investors seeking to redeem shares in funds they no longer wish to hold, such as in response to poor fund management, poor performance, or for other reasons. Under the final amendments, all redemptions out of an affected fund on a day the fund has net redemptions in excess of 5% of net assets, regardless of the cause for the redemption, will result in a liquidity fee being calculated and assessed, unless the fund's liquidity costs are *de minimis.* However, we believe that such a fee would be unlikely to affect an investor's decision to redeem from a fund the investor no longer wishes to hold for reasons that are persistent characteristics of a fund, such as the ability of an individual fund manager, and thus is less likely to be prone to a sudden wave of redemptions on a particular day. As such, we believe that the effect of the liquidity fee requirement on efficiency via market discipline will be limited. Moreover, the liquidity fee framework is intended to capture any liquidity costs that redemptions impose on affected funds and protect non-transacting investors from dilution costs.

In addition, we believe that the final liquidity fee framework is a less costly anti-dilution tool relative to the proposal. Specifically, as discussed in section II, the costs of the liquidity fee framework are expected to be lower than those of the proposed swing pricing requirement. For example, many commenters stated that liquidity fees would be easier for money market funds to implement.[639] Some commenters suggested that funds would be able to leverage and build off of their existing experience with liquidity fees under the current regulatory baseline,[640] while commenters indicated that swing pricing is ill-suited for money market funds given the general lack of experience with swing pricing in the money market fund industry.[641]

b. Benefits and Costs of Specific Aspects of the Final Implementation of the Liquidity Fee Amendments

The final liquidity fee requirement for institutional prime and institutional tax-exempt funds is characterized by six features. First, if a fund has net redemptions exceeding 5% on a given day, the fund must estimate the liquidity costs associated with those redemptions and assess a fee (unless the fee would be *de minimis*). Second, funds will use order flow information available within a reasonable period after the last NAV strike of the day to determine whether the 5% net redemption threshold has been reached. Third, the liquidity fee amount will be an estimate of the costs of selling a vertical slice of the fund's portfolio to meet the net redemptions. Fourth, if the fund cannot determine that amount based on current market conditions, a set default fee of 1% will apply. Fifth,

[638] *See, e.g.,* Federated Hermes Comment Letter I.

[639] *See, e.g.,* Federated Hermes Comment Letter II; Invesco Comment Letter; SIFMA AMG Comment Letter; Schwab Comment Letter; IIF Comment Letter; BlackRock Comment Letter.

[640] *See, e.g.,* Federated Hermes Comment Letter II; Invesco Comment Letter; SIFMA AMG Comment Letter; Schwab Comment Letter; IIF Comment Letter.

[641] *See* Morgan Stanley Comment Letter; SIFMA AMG Comment Letter; IIF Comment Letter; Federated Hermes Comment Letter I; Federated Hermes Comment Letter II; Comment Letter of Senator Pat Toomey (Apr. 12, 2022) (''Senator Toomey Comment Letter''); Mutual Fund Directors Forum Comment Letter; *see also* Profs. Ceccheti and Schoenholtz Comment Letter.

the mandatory liquidity framework would not cap mandatory liquidity fees triggered by the 5% net redemption threshold. Sixth, all non-government money market funds could assess discretionary liquidity fees if the board (or its delegate) determines that fees are in the best interest of the fund, which may include situations in which net redemptions are at or below the 5% threshold. These features of the final rule aim to address the liquidity externalities that redeemers impose on investors remaining in the fund in a tailored manner and are expected to result in reductions in the first-mover advantage and run risk in institutional money market funds.

i. Fee Threshold: 5% Net Redemption Threshold

Under the final amendments, when daily net redemptions exceed 5% of the fund's net assets, funds will be required to assess a liquidity fee (unless the fee would be *de minimis*), with the fee amount reflecting the fund's good faith estimate of the spread, other transaction (*i.e.,* any charges, fees, and taxes associated with portfolio security sales), and market impact costs the fund would incur if it were to sell a pro rata share of each security in its portfolio to satisfy the amount of net redemptions (*i.e.,* vertical slice). The final amendments may, thus, allow funds to recapture the liquidity costs of large redemptions, benefitting non-transacting shareholders and reducing liquidity externalities redeemers impose on other fund investors.

The final framework will require funds to charge liquidity fees that include the spread cost. Relative to a model-generated mid price, striking a NAV at a model-generated bid price may result in less dilution of existing shareholders on days with net redemptions. To the degree that most funds are using model-generated bid prices from pricing vendors to strike the NAV, and assuming that these bid prices accurately reflect the bid price in the market, the primary benefit of the final liquidity fee requirements would operate through the market impact. Market impact costs are likely to be significant during periods in which funds face large redemptions and short-term funding markets are under stress, such that market impact costs are significant. These are also periods in which dilution costs and run risk in affected money market funds, and, hence, the benefits of liquidity fees, may be highest.

Based on an analysis of historical daily redemptions out of institutional prime and institutional tax-exempt money market funds between December 2016 and October 2021 and as discussed in greater detail in section IV.D.4, net fund flows on most days are low. For example, Table 6 shows that an average of 3.2% of the 47 institutional prime and institutional tax-exempt money market funds that operated during that time period would have exceed the 5% net redemption threshold on any given day.

TABLE 6—AVERAGE PERCENTAGE OF INSTITUTIONAL MONEY MARKET FUNDS PER DAY ABOVE A GIVEN THRESHOLD

Institutional funds	Average fund count	Net redemption threshold						
		4%	5%	6%	7%	8%	9%	10%
Prime Only	37	3.4	2.4	1.7	1.3	0.9	0.8	0.6
Prime + Tax-exempt	47	4.4	3.2	2.4	1.8	1.4	1.1	0.9

Source: CraneData.

Importantly, the 5% net redemption threshold may allow funds to recapture spread and market impact costs, and potentially prevent more of the dilution from large redemptions, as compared to higher thresholds. For example, as can be seen from Table 7, an analysis of CraneData on outflows during the week ending March 20, 2020, suggests that approximately 31% of ''fund days'' [642] for institutional prime and institutional tax-exempt funds exceeded the 5% threshold. In contrast, only 11% of the fund days were in excess of 10%. This analysis suggests that the final rule's 5% threshold would have triggered mandatory liquidity fees for approximately one third of the time during the week of March 20, 2020. Relative to a higher net redemption threshold, under the final rule, the liquidity fee would trigger more often, potentially recapturing more dilution costs and having a greater effect on redemption incentives.

TABLE 7—PERCENTAGE OF FUND DAYS ABOVE A REDEMPTION THRESHOLD DURING THE WEEK OF MARCH 20, 2020

Institutional funds	Fund count	Net redemption threshold						
		4%	5%	6%	7%	8%	9%	10%
Prime Only	35	43	34	31	25	19	16	12
Prime + Tax-exempt	43	39	31	28	21	17	14	11

Source: CraneData.

Overall, the net redemption threshold for the mandatory liquidity fee framework influences the number of funds that experience significant redemptions that generally would be required to assess a liquidity fee during severe market stress. In the swing pricing context, several commenters suggested the proposed 4% redemption threshold for applying a market impact factor was too low.[643] Below we present additional analysis to further quantify the effects of the redemption threshold. Specifically, we conducted an analysis of the fraction of funds that would have dropped below certain liquid asset thresholds and would have been required to assess a liquidity fee during market stress of March 2020, had the final amendments been in place. This analysis may shed light on the fraction

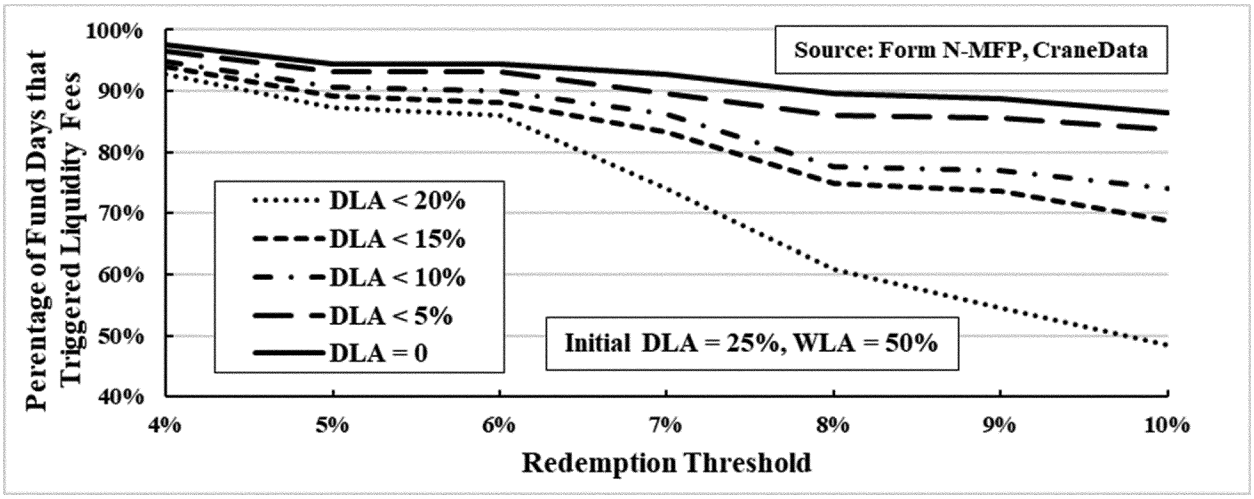
[642] ''Fund days'' refers to observations that consist of the set of daily redemptions for the funds in our sample. For example, a sample of 35 funds observed over 5 days produces a sample of 175 fund days.

[643] *See, e.g.,* IIF Comment Letter; ICI Comment Letter.

of funds that would have been required to assess liquidity fees under different redemption thresholds.

First, we combine daily redemption patterns from 42 public institutional prime funds during the week ending March 20, 2020, with 20 equally sized bins representing different weekly liquid asset distributions maturing across days 2 through 5 of the week (*e.g.,* one such distribution would be characterized by 30% of weekly liquid assets maturing on day 2, 25% on day 3, 25% on day 4, 20% on day 5).[644] This combination results in 840 series corresponding to hypothetical paths of liquidity during a period of stress.[645] Given these paths, we determine the proportion of days on which a fee would be triggered as a percentage of days on which funds experience various declines in levels of liquidity. For example, Figure 5 plots the results for the paths for all funds starting with 25% in daily liquid assets and 50% in weekly liquid assets, with the fraction of days funds would generally have been required to assess a liquidity fee on the vertical axis, as a function of various levels for the net redemption threshold on the horizontal axis.[646]

Figure 5—One Week of Stress: Percentage of Fund Days That Drop Below a Given Daily Liquid Asset Threshold That Would Have Been Required To Apply a Liquidity Fee as a Function of the Redemption Threshold



Next, we extend a model employed by one commenter[647] and conduct a similar analysis for more prolonged periods of stress, such as 3 to 5 weeks of sustained redemptions using the weekly redemptions seen for the crisis week ending March 20, 2020, which could occur absent government intervention. Specifically, we combine weekly redemption patterns from 42 public institutional prime funds during the week ending March 20, 2020, with 1,744 public institutional prime portfolios observed in the monthly Form N–MFP filings over a period spanning October 2016 to February 2020.[648] The portfolio assets are binned according to their maturities (ranging from 1 week to more than 10 weeks). This combination results in 73,248 series corresponding to hypothetical paths of weekly liquidity during a hypothetical period of sustained stress.[649] All funds enter the stress period with over 50% in weekly liquid assets. Figure 6 plots the results for a 3-week stress period, while Figure 7 plots the results for a 5 week stress period.[650]

Figure 6—Three Weeks of Stress: Percentage of Weeks During Which Funds That Dropped Below a Given Weekly Liquid Asset Threshold Would Have Been Required To Apply a Liquidity Fee as a Function of the Redemption Threshold

[644] *See* section III.D.2.a and section III.D.2.a of the Proposing Release where the Commission used the same models to quantify the potential effect of various liquidity thresholds on the probability that money market funds would confront liquidity stress.

[645] Applying the 42 redemptions paths to different day 2 through 5 weekly liquid asset distributions allows us to consider how funds' liquidity would have fared under alternate portfolios during the week of Mar. 20, 2020, while increasing the number of data points for the analysis.

[646] Additional models with higher levels of initial liquidity produced higher percentages of fund days for which funds that eventually dropped below a given threshold would have been required to apply liquidity fees as a function of the net redemption threshold.

[647] *See* ICI Comment Letter.

[648] *See* section IV.D.2.a for additional model details. To address the robustness of the results, different model scenarios, which removed redemption patterns associated with funds with weekly liquid assets below 35% that may have exasperated redemptions, did not change the result significantly.

[649] The redemption thresholds are adjusted so that weekly outflows are comparable to daily redemption thresholds. For instance, a 4% daily outflow sustained for a five day trading week implies a weekly outflow of about 18.5%.

[650] Since these figures chart weekly redemption rates, this analysis does not capture instances where net redemptions exceed a given redemption threshold on a single day, but the average weekly net redemption does not. Additional models extending the stress period out to 10 weeks produced lower percentages of weeks for which funds that dropped below a given threshold would have been required to apply liquidity fees as a function of the net redemption threshold.

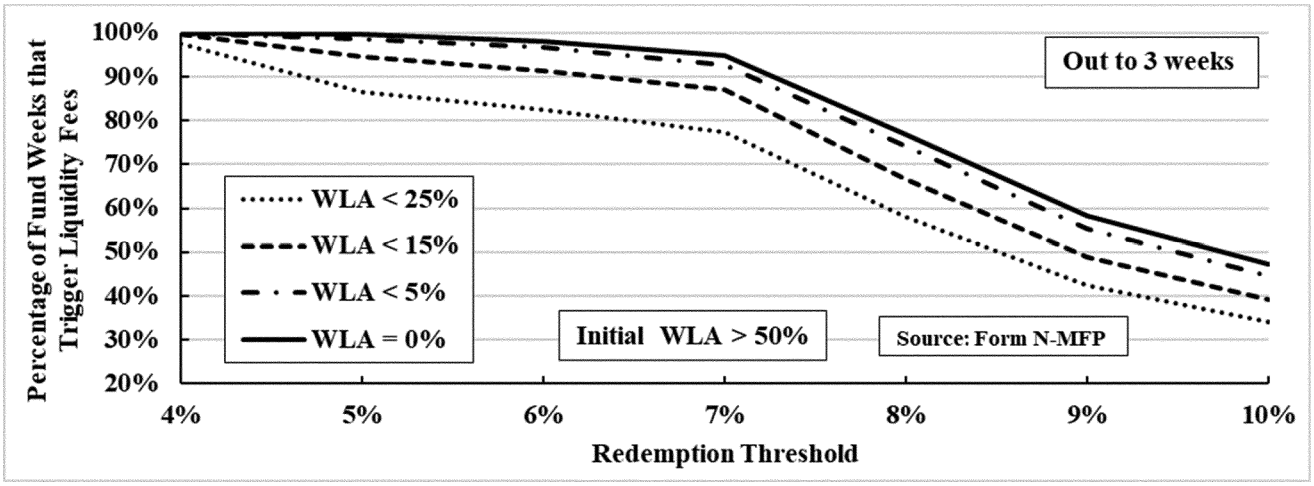
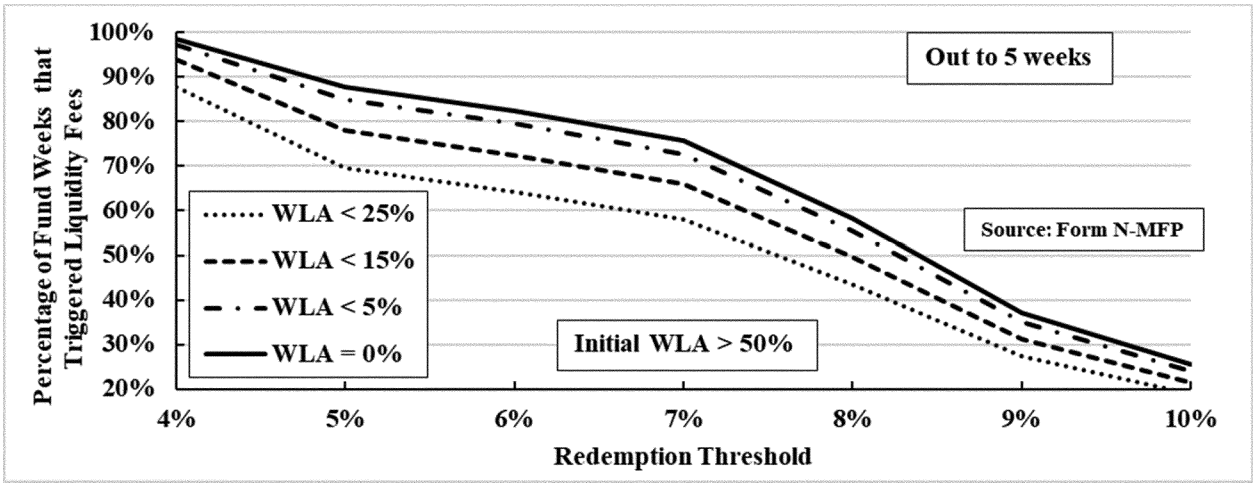


Figure 7—Five Weeks of Stress: Percentage of Weeks During Which Funds That Dropped Below a Given Weekly Liquid Asset Threshold Would Have Been Required To Apply a Liquidity Fee as a Function of the Redemption Threshold



The above analyses show that, as the net redemption threshold rises, the frequency with which funds experiencing severe declines in their liquid assets would have been required to apply a liquidity fee declines. This analysis may be interpreted as quantifying the impact of the redemption threshold on how many funds with various levels of liquidity would have been required to apply a liquidity fee had the final amendments been in place under various durations of stress.

Alternatively, we can examine the impact of the redemption threshold by analyzing fund outflows during the worst days of market stress in March 2020. This analysis may shed light on how the redemption threshold influences the scope of the liquidity fee requirements on days with the largest outflows out of all funds. Specifically, Table 8 and Figure 8, using CraneData, quantify the average percentage of fund days for which outflows exceeded various threshold levels over multiple time periods, including the worst 3, 5, and 10 days, measured by aggregate net redemptions, in March 2020.

TABLE 8—PERCENTAGE OF FUND DAYS FOR INSTITUTIONAL PRIME FUNDS ABOVE A GIVEN THRESHOLD

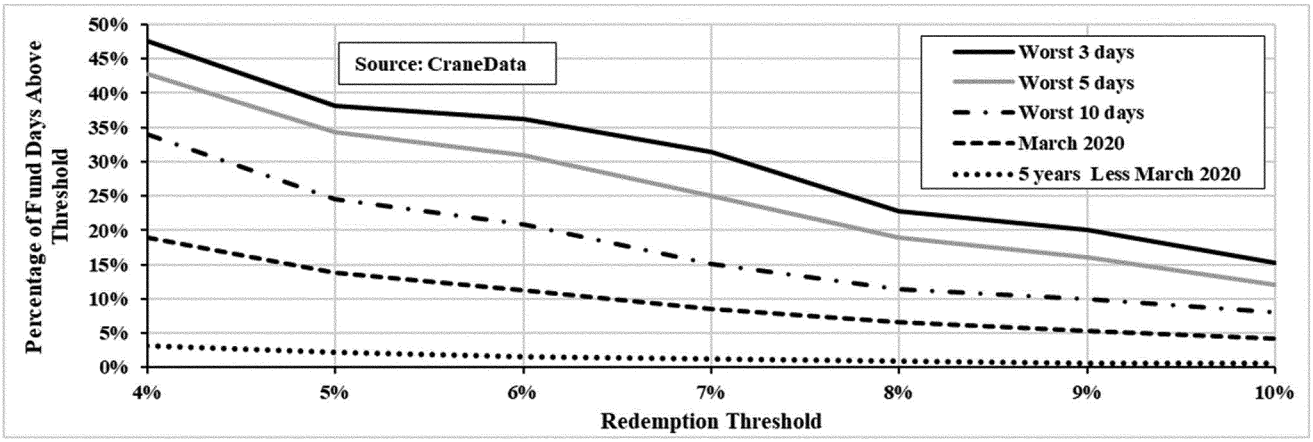
Dates	Average fund count	Net redemption threshold						
		4%	5%	6%	7%	8%	9%	10%
Worst 3 days	35	48	38	36	31	23	20	15
Worst 5 days	35	43	34	31	25	19	16	12
Worst 10 days	35	34	25	21	15	11	10	8
March 2020	35	19	14	11	8	7	5	4

TABLE 8—PERCENTAGE OF FUND DAYS FOR INSTITUTIONAL PRIME FUNDS ABOVE A GIVEN THRESHOLD—Continued

Dates	Average fund count	Net redemption threshold						
		4%	5%	6%	7%	8%	9%	10%
5 years Excl. March 2020	37	3.2	2.2	1.6	1.2	0.9	0.7	0.5

Source: CraneData.

Figure 8—Percentage of Fund Days for Institutional Prime Funds Above a Given Threshold



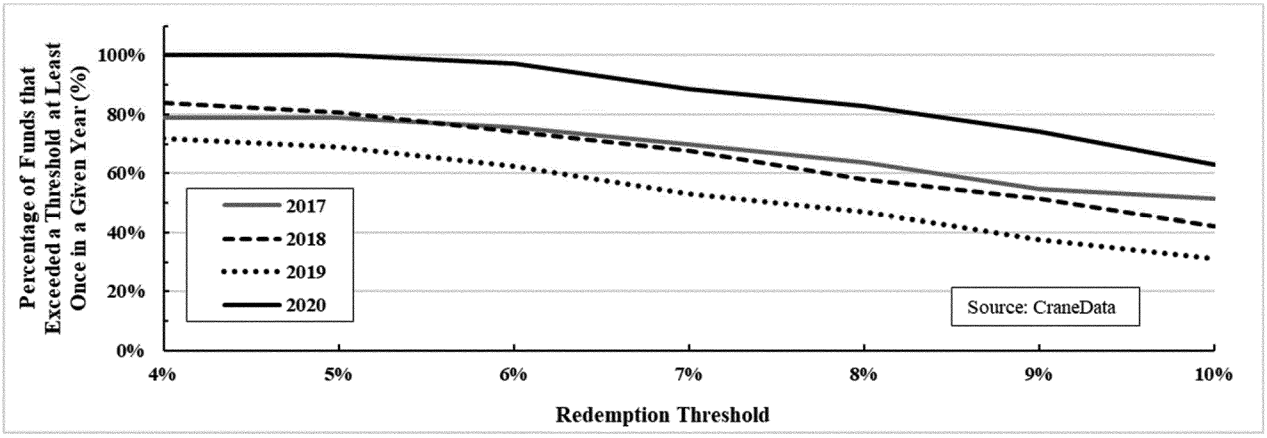
The final net redemption threshold impacts the number of funds that will be required to calculate liquidity fees under both normal and stressed conditions when faced with large outflows. Outflows in excess of the 5% net redemption threshold occur with some regularity even outside of stressed market environments. Accordingly, we consider the extent to which various redemption thresholds were crossed in recent years outside of the March 2020 stress event. We first conduct this analysis at the fund level for each year from 2017 to 2020. Table 9 and Figure 9, using CraneData, report the percentage of funds that, in a given year, would have exceeded a given redemption threshold on at least one day. This analysis helps inform the extent to which funds would have had to calculate a liquidity fee at least once in a given year had the final liquidity fee framework been in place and, thus, reflecting associated fixed costs.

TABLE 9—PERCENTAGE OF INSTITUTIONAL PRIME FUNDS THAT WOULD HAVE EXCEED THE NET REDEMPTION THRESHOLD AT LEAST ONE DAY IN A GIVEN YEAR

Year	Average fund count	Net redemption threshold						
		4%	5%	6%	7%	8%	9%	10%
2017	33	79	79	76	70	64	55	52
2018	31	84	81	74	68	58	52	42
2019	32	72	69	63	53	47	38	31
2020	35	100	100	97	89	83	74	63

Source: CraneData.

Figure 9—Percentage of Institutional Prime Funds That Would Have Exceed the Net Redemption Threshold at Least One Day in a Given Year



Next, Table 10 and Figure 10, using CraneData, report the distribution of fund day percentages that would have exceeded a given redemption threshold over 5 years (excluding March 2020). This analysis reflects the distribution of percentages on which the fee would have been charged industry-wide (as a percentage of fund-days over the 5-year period) and, thus, reflects the variable cost associated with crossing the redemption threshold outside of a crisis period when liquidity costs are likely very low or zero.[651] For example, net redemptions exceeded the 5% redemption threshold on 7.1% of fund days during this period.

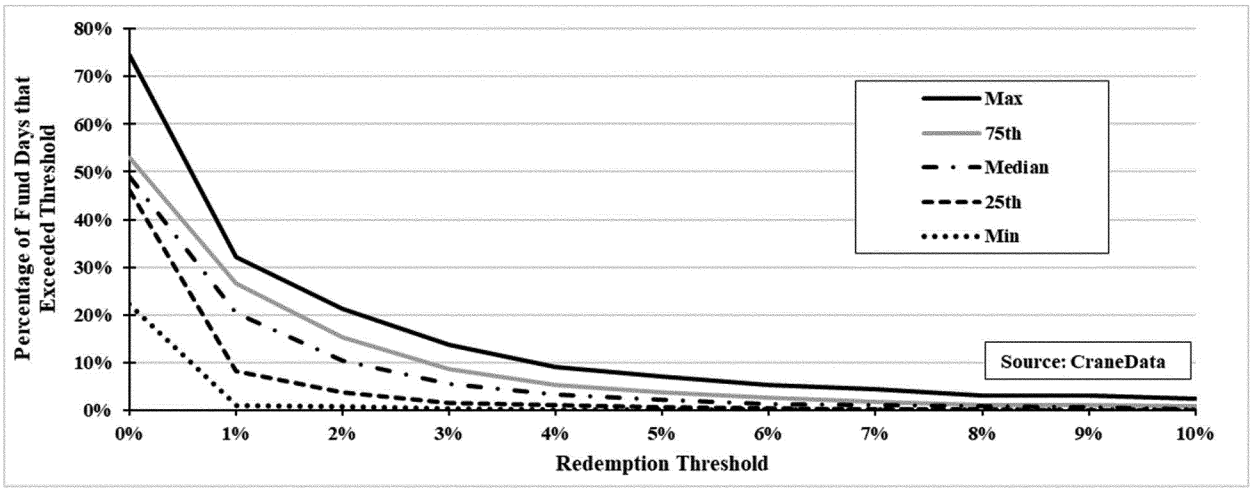
TABLE 10—DISTRIBUTION OF FUND DAYS PERCENTAGES ON WHICH A FEE WOULD HAVE BEEN IMPLEMENTED OVER 5 YEARS

[Excluding March 2020]

Percentile	Net redemption threshold										
	0%	1%	2%	3%	4%	5%	6%	7%	8%	9%	10%
Max	74	32	21	14	9.0	7.1	5.2	4.4	3.1	3.0	2.4
75th	53	27	15	8.7	5.3	3.8	2.6	1.7	1.1	1.0	0.9
Median	49	20	10	5.5	3.3	2.2	1.3	1.0	0.9	0.5	0.3
25th	46	8.1	3.7	1.5	1.0	0.5	0.5	0.3	0.2	0.0	0.0
Min	22	1.0	0.8	0.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Source: CraneData.

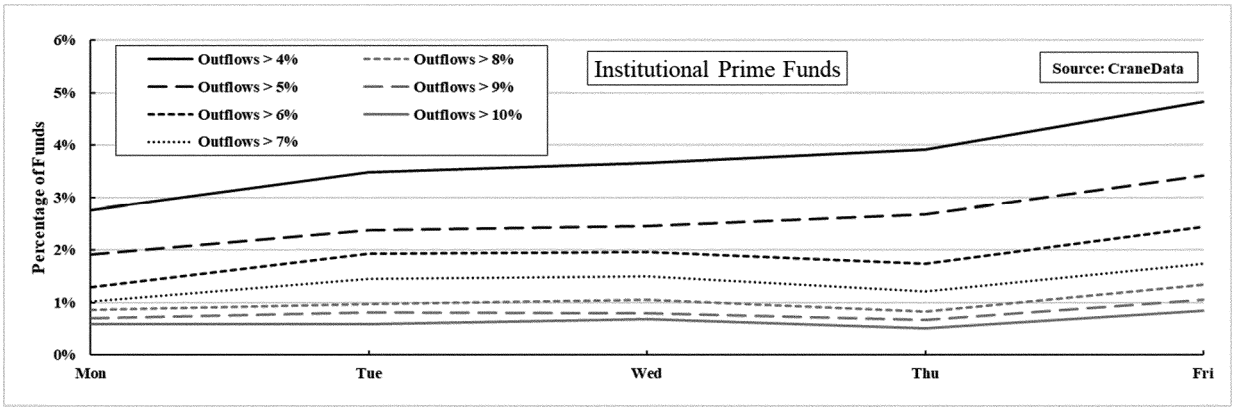
Figure 10—Distribution of Fund Days Percentages on Which a Fee Would Have Been Implemented Over 5 Years (Excluding March 2020)



[651] To illustrate the analysis, we observed around 37 funds over 1,228 trading days over five years. We thus have around 45,436 (= 37 × 1,228) fund-day observations. A value on the Max curve (red line) of around 7.1% on the y-axis for a 5% threshold on the x-axis then means that net redemptions exceeded 5% threshold on 7.1%-or 87 (= 7.1% × 1,228) in total—fund days.

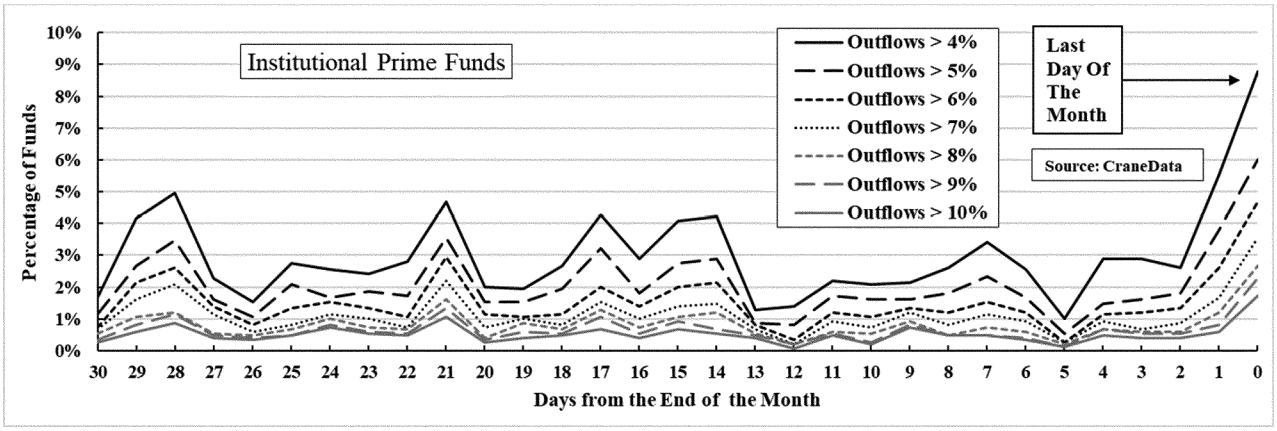
In addition, large fund outflows may be seasonal. To quantify potential seasonality in fund outflows, we analyzed daily data from CraneData covering outflows out of institutional prime and institutional tax-exempt funds between December 1, 2016, and October 28, 2021.[652] The discussion below shows that there are significant outflow patterns by day of week and day of month among others. First, institutional prime funds tend to have more large outflows on Fridays, while institutional tax-exempt funds tend to have more large outflows on Thursdays, as can be seen from Figure 11.

Figure 11—Percentage of Institutional Prime Funds With Outflows Above a Given Threshold as a Function of the Day of the Week



Second, Figure 12 below shows that the last day of the month accounts for some of the largest outflows in excess of 5%.

Figure 12—Percentage of Funds With Outflows Above a Given Threshold as a Function of Days From the End of the Month



The above patterns are consistent with institutional investors relying on money market funds as a cash management tool (for example, to meet payroll, tax, and other obligations). Moreover, large fund outflows may be at least partly seasonal and unrelated to stress in underlying asset markets. Under the final rule, outflows in excess of 5% would trigger the compliance costs related to the liquidity fee requirement and the market impact factor analysis on each day with large outflows.

As discussed in the prior section, the implementation of liquidity fees is expected to give rise to compliance burdens and other costs on money market funds. These costs may be mitigated by four factors. First, many affected money market funds may already be using bid prices to strike the NAV. Second, the rule does not require a daily recalculation of market impact factors. As discussed in section II, in order to establish a good faith estimate of the market impact of selling a vertical slice of the fund's portfolio to meet net redemptions, a fund may document its estimates of the effect of selling different amounts of its portfolio securities on each security's price into pricing grids for different market conditions (such as periods of credit stress, liquidity rate stress, interest rate stress, or a combination of such stresses). The fund would refer to the appropriate grid that reasonably approximates current market conditions on days when its net redemptions exceed 5% to identify the market impact for the assumed amount to be sold under the required vertical

[652] This analysis uses daily flows reported in CraneData on 1,228 days between Dec. 2016 and Oct. 2021. As of Sept. 2021, CraneData covered 87% of the funds and 96% of total assets under management. Flows at the class level were aggregated to the fund level. Flows of feeder funds were aggregated for an approximation of flows for the corresponding master fund. For the purposes of this seasonality analysis, outflows during Mar. 2020 were omitted, because they may have been driven by stress and the purpose of the analysis is to examine seasonality of routine fund flows under normal market conditions.

slice analysis. This may reduce the marginal costs of market impact factor calculations on days when funds experience net redemptions above 5%. Third, as discussed in section II, funds would not be required to perform a security-by-security pricing analysis, and would be able to pool similar securities into categories for purposes of the market impact analysis. Fourth, as discussed in section II, under normal market conditions, the calculated liquidity fee amount generally is likely to be *de minimis,* mitigating the costs to redeeming shareholders on days of predictably large outflows when market conditions are normal and markets impacts (and, thus, liquidity externalities) are near zero.

Finally, the Commission has considered how the net redemption threshold for the mandatory liquidity fees may interact with the final 25% daily and 50% weekly liquid asset requirements. Specifically, Table 11 below illustrates a theoretical relationship between constant daily outflow and the implied weekly outflow after 5 days. If a fund experiences 5 consecutive days of 5% outflows, it would experience cumulative 23% outflows by the end of the week. By contrast, if a fund experiences 5 consecutive days of 10% outflows, it would experience cumulative 41% outflows by the end of the week. While the final 50% weekly liquid asset requirement could be enough to cover the outflows for that week, depending on the maturity structure of weekly liquid assets, the fund may not have enough liquidity to cover redemptions over the course of the week. In that case, the liquidity fee may be useful to recapture liquidity costs and dis-incentivize any redemptions driven by a first-mover advantage as the wave of redemptions grows and the markets come under stress. Notably, this is a numerical example, and future patterns of redemptions under stress and portfolio maturity structures of affected funds, particularly the maturity structure of weekly liquid assets, as well as the way in which investors and money market funds respond to various provisions of the final rule, may influence the ability of funds to absorb redemptions out of daily or weekly liquidity. However, this analysis suggests that a higher redemption threshold for liquidity fees may reduce the amount of dilution costs recaptured by funds during redemption waves.

TABLE 11—CUMULATIVE WEEKLY OUTFLOWS AFTER 5 DAYS OF OUTFLOWS

Daily outflows	Cumulative weekly outflows (%)
4%	18
5%	23
6%	27
7%	30
8%	34
9%	38
10%	41

Overall, the 5% net redemption threshold may result in some instances of the imposition of fees during normal market conditions, and funds would be required to estimate liquidity fees when the liquidity costs of large redemptions are very small. However, the 5% net redemption threshold may enhance the benefits of liquidity fees for non-transacting investors during redemption waves and under stressed conditions, which may serve to reduce self-fulfilling run incentives, protect non-transacting investors, and improve the resilience of money market funds.

The Commission proposed a swing pricing requirement, under which, if net redemptions exceeded 4% divided by the number of pricing periods per day, the swing factor would be required to include not only the spread costs and other transaction costs, but also good faith estimates of the market impact of net redemptions. The Commission received comments stating that the threshold could act as a ''bright line'' that could actually lead to runs.[653] While the final amendments replace the proposed swing pricing requirement with a liquidity fee framework and utilize a higher 5% net redemption threshold for the imposition of liquidity fees, the Commission has considered whether such a threshold in the liquidity fee framework could lead to run risk.

However, several aspects of the final rule are intended to mitigate any such incentives. The net redemption threshold for mandatory liquidity fees is based on same-day fund flows. As discussed in the prior section, we believe that the net redemption threshold is less susceptible to run risk than a weekly liquid asset threshold. Moreover, because mandatory liquidity fees are based on same-day net redemptions, an investor's decision to redeem directly influences the probability that a liquidity fee will be assessed to their redemption. Further, to the degree that institutional investors expect other investors have similar expectations of net redemptions from a fund, the incentive to strategically redeem shares ahead of other investors is diminished. Finally, under the final rule and as discussed in greater detail in section II.B and section IV.C.4.b.vi, funds may assess discretionary liquidity fees on days when net redemptions are at or below the 5% threshold. To the degree that fund boards (or their delegates) determine to apply discretionary fees, this element of the final rule may further reduce the ability of redeeming investors to strategically redeem ahead of the likely imposition of a liquidity fee. However, we recognize that funds may face disincentives to apply these liquidity fees and money market fund boards have not historically applied liquidity fees when they had the discretion to do so, which may reduce the effectiveness of this mitigating factor.

ii. Fee Threshold: Using Fund Flows Received Within a Reasonable Period After the Last NAV Strike Each Day

In response to the proposed swing pricing requirement for money market funds, some commenters discussed difficulties in obtaining timely flow information to enable same-day NAV adjustments. While the final rule imposes a liquidity fee framework, rather than swing pricing, comments concerning flow timing and flow aggregation practices by money market funds informed the design of the redemption threshold for the liquidity fee framework. Specifically, some commenters indicated that institutional money market funds that offer same-day settlement may receive some flows overnight that will settle on a T+1 basis, and thus some of these funds do not have final order flow information until the following morning. One commenter stated that one of its former institutional prime funds offered same-day settlement and therefore imposed order cut-off times, and these cut-off times were the same as the NAV strike time.[654] Another commenter stated that its privately offered money market funds, in which other funds invest, do not have sufficient flow data because the flow data from the underlying investing funds is only available on a T+1 basis.[655] Another commenter stated that, over a representative period, one of its institutional prime funds received 35.7% of trade notices after the fund's NAV calculation time of 3 p.m. ET, with

[653] *See, e.g.,* IIF Comment Letter; Federated Hermes Comment Letter I.

[654] *See, e.g.,* Fidelity Comment Letter.

[655] *See, e.g.,* Capital Group Comment Letter.

these trades receiving that day's NAV, but settling on a T+1 basis.[656] A few commenters requested that the Commission provide guidance that if a NAV is adjusted based on reasonable inquiry and estimates, a later determination that a fund did not have net redemptions for the pricing period would not constitute a NAV error.[657]

As discussed in section II, institutional money market funds often impose order cut-off times to be able to offer same-day settlement, which requires that funds complete Fedwire instructions before the Federal Reserve's 6:45 p.m. ET Fedwire cut-off time. Therefore, many institutional funds would have a sizeable portion of their daily flows within a reasonable period of time after the last pricing time of the day. However, complete flow information may not always be available to affected money market funds on the same day, and the availability of flow information may depend on fund intermediaries, how the fund set up custodian and omnibus accounts, and the timing for batching of orders and transmitting them, among other things. For example, funds may receive cancellations, or corrections of intermediary or investor errors, which modify the flows. In addition, funds or some fund share classes may settle some transactions on T+1 and still receive flow information from intermediaries that is eligible to receive the NAV as of the last pricing time. Thus, there will be circumstances in which the flow information a fund uses to determine whether it has crossed the net redemption threshold does not reflect the fund's full flows for that day.

As discussed in section II.B.2.a, funds would be able to use flows received within a reasonable period after the last pricing time to determine whether the fund has crossed the 5% threshold. To the extent that a fund received additional flow information after determining that it crossed the 5% threshold, but before applying a liquidity fee, the fund could take the additional flow information into account when determining the amount of the liquidity fee. This element of the final liquidity fee framework will enable funds to assess liquidity fees without requiring costly changes to intermediaries' technological systems and order batching, validation, and transmission practices, earlier order cutoff times, fund distribution networks, or the reduction in the number of NAV strikes a day funds are able to offer.

Moreover, as a result of this element of the final rule, liquidity fees will be assessed based on same-day outflows, rather than the previous day's flows. Information about historical flows may be generally available in, among others, subscription databases and other data feeds, while same-day flows are not predictable by investors at the time they place their orders. This reduces the risk that investors would be able to predict whether a liquidity fee will not apply on a given day and time redemptions accordingly to avoid the liquidity fee. In addition, under the final rule, redeemers will be charged for the liquidity costs of their redemptions, rather than for the costs of redemptions made by other investors on the previous day. Finally, this element of the final rule may allow funds to recapture more of the dilution costs of large redemptions on a given day, regardless of whether a fund experiences a wave of redemptions or individual days of large redemptions. Thus, this element of the final rule may enhance the benefits of the liquidity fee framework for dilution costs and run incentives.

Fund flow information that is available within a reasonable period after the last pricing period of the day may under or overestimate ex post net redemptions on a given day. The direction and magnitude of the difference between ex ante estimated fund flows and ex post fund flows would depend on intraday redemption and subscription patterns of fund investors, a fund's reliance on various distribution channels, the timing of intermediaries' batch processing orders, including omnibus accounts, and the propensity of intermediaries and investors to preview delayed redemptions or subscriptions to fund managers. Thus, this element of the final rule may result in some instances of liquidity fees not being charged based on available flows when they would have been based on ex post flows, and vice versa. While institutional investors may theoretically have incentives to delay the submission of large redemption orders after the NAV is struck to reduce the likelihood that a liquidity fee is charged, an institutional investor must submit its orders before the fund calculates its NAV to receive that price.[658] In addition, intermediaries face no such incentives. Crucially, intermediaries commonly have cutoff times to receive same day settlement, and it is intermediary technological systems and flow aggregation and transmission practices that may drive when funds receive orders. This may reduce the risk of strategic delays in the submissions of redemption flows. Moreover, as discussed in the previous sections, the Commission expects that any liquidity fees under normal market conditions will be very low, further reducing incentives for strategic order flow delays. Finally, as discussed in greater detail below, the final rule will also allow funds to charge discretionary fees even if same day outflows are below the 5% threshold, further reducing certainty about the imposition of liquidity fees around the threshold and mitigating the risk of strategic redemptions or order flow delays.

The final rule will require affected funds to apply a liquidity fee to all shares redeemed on the day the mandatory liquidity fee is triggered, which may impose some costs on funds currently offering multiple NAV strikes per day. Specifically, investors may redeem in earlier pricing periods, before the fund knows that it has crossed the net redemption threshold triggering the liquidity fee requirement for the day. In such circumstances, funds offering multiple NAV strikes would be required to develop a method for applying the fee to shares redeemed in earlier pricing periods on that day. Section II.B.2.a discusses various approaches funds may take to address this issue. In addition, some funds may choose to reduce the number of NAV strikes they offer or no longer offer multiple NAV strikes for operational reasons. Depending on how different funds respond to these amendments, redeeming investors may experience a reduction in their access to liquidity relative to the current baseline. However, the mandatory liquidity fees are unlikely to result in a redeeming investor being unable to access same-day liquidity.

iii. Fee Amount: Costs of Selling the Pro-Rata Share of Fund Holdings

The costs and benefits of the final rule's requirements concerning the fee amount are informed by two sets of considerations.

First, liquidity fees charged by a money market fund are intended to make investors indifferent between selling shares in the fund and selling the underlying assets if they were held by investors directly. The liquidity fee is not intended to disproportionally discourage sales out of money market funds relative to underlying assets, but rather to reduce dilution that may arise out of the fund structure.

Second, smaller fees may preserve a first-mover advantage in redemptions out of money market funds suffering from short-term stress, while larger fees may lock investors into failing funds if

[656] *See, e.g.,* Federated Hermes Comment Letter II.

[657] *See, e.g.,* Capital Group Comment Letter; IDC Comment Letter.

[658] *See* 17 CFR 270.22c–1.

underlying portfolio holdings do not retain their value in the medium and long term. If a liquidity crunch is temporary and underlying fund holdings retain their value in the medium and long term (such as during March 2020, when issuers were not defaulting and redemptions were driven by a dash for cash), funds lose value primarily when they sell securities into stressed markets to meet redemptions. If, however, underlying fund holdings lose their value in the medium- and long-term, investors may run because of uncertainty about the extent of their fund's exposures to defaulting assets (such as during the 2008 financial crisis). To the degree that money market fund investors face uncertainty about the underlying source of stress, they have an incentive to redeem in a flight to safety. In this setting, a fee that makes money market fund investors indifferent between redeeming or remaining in the fund is ex-post efficient in cases of liquidity stress, but ex-post inefficient in the latter scenario, as it is more likely to incentivize investors to stay in a failing fund. In sum, higher fees may slow redemptions out of money market funds, but the ex-post efficiency of such effects may depend on the nature of the crisis.

Under the final amendments, if an affected fund experiences net redemptions of more than 5% on a given day, it would be required to assess a liquidity fee that includes not only the spread costs and other transaction costs, but also good faith estimates of the market impact of sales to meet net redemptions. To the extent funds are able to estimate or forecast market impact costs accurately, the requirement to assess the market impact of sales to meet net redemptions when daily net redemptions exceed 5% would result in redeeming investors bearing not only the direct spread and transaction costs from their redemptions, but also the impact of their redemptions on the market value of the fund's holdings. This may allow shareholders remaining in the fund to capture more of the dilution cost of redemptions, which includes not only direct transaction costs and near-term price movements, but the impact of the redemptions on the fund's portfolio as a whole. However, the magnitude of this benefit may be reduced by the fact that the final amendments would only require the imposition of liquidity fees when an affected fund's daily net redemptions exceed 5%.[659]

Importantly, the mandatory liquidity fee framework will require funds to calculate the liquidity fee as if the fund were selling the pro-rata share of all of the fund's holdings, rather than, for example, assuming the fund would absorb redemptions out of daily liquid assets. If a fund were to absorb large redemptions out of daily or weekly liquid assets—and their ability to do so may be enhanced by the final amendments' increased liquidity requirements—the immediate transaction costs imposed on the funds would be lower. However, the fund would have less remaining daily and weekly liquidity and transacting shareholders would be diluting remaining investors in a manner not captured by estimated transaction costs. Thus, this aspect of the final amendments will make redeeming investors bear not just the immediate costs of covering redemptions, but also the costs of rebalancing the fund portfolio to the pre-redemption levels of liquid asset holdings.

However, this element of the final rule will require redeeming shareholders to bear liquidity costs larger than the direct liquidity costs they may impose on the fund. Some commenters stated that this approach is fundamentally inconsistent with how money market funds operate because, given the nature of money market fund holdings, money market funds typically absorb redemptions out of daily and weekly liquid assets.[660] However, assets other than daily and weekly liquid assets—such as municipal securities and commercial paper that do not mature in the near term—may become illiquid in times of stress and may need to be held to maturity by the fund. Thus, the realized transaction costs of most redemptions may be zero as funds absorb them out of daily liquidity, while the true liquidity costs of redemptions may consist of the depletion of daily and weekly liquidity during times of stress (when rebalancing is especially expensive) rather than the sale of illiquid assets. While there is a lack of research on portfolio rebalancing by money market funds, some research in a parallel open end fund context shows that funds may optimally rebuild cash buffers after outflows to prevent future forced sales of illiquid assets.[661] To the degree that money market funds may also seek to rebalance liquid assets after large outflows, this may suggest that liquidity costs should be measured using a vertical slice assumption due to the cost of rebuilding liquidity after redemptions that deplete liquid assets.

To the degree that this aspect of the final amendments could impose a cost on redeemers that is larger than the realized trading cost of their redemptions, it may reduce the attractiveness of affected money market funds to some investors. Importantly, when direct trading costs of redemptions are zero because redemptions are absorbed out of weekly liquid assets, redemptions still dilute non-transacting investors by leaving the fund depleted of liquidity. This aspect of the final amendments would require redeemers to internalize a greater share of the liquidity externalities that they impose on non-transacting investors. In addition, liquidity costs paid by redeemers under the liquidity fee requirement would flow back to remaining shareholders, dis-incentivizing redemptions and reducing the first-mover advantage during times of stress. This may attract longer-term investors into affected money market funds.

The Commission has also received comments that market impact factors may be too difficult or costly to estimate and that this may give rise to errors in assessed fees.[662] As discussed in section II, the final rule is tailored to address these concerns and reduce such costs in six ways. First, section II provides guidance on one method funds could use to make a good faith estimate of the costs of selling a vertical slice of the fund's portfolio to meet net redemptions using pricing grids relying on historical data. Second, consistent with the proposal, the final rule permits a fund to estimate liquidity costs for each type of security with the same or substantially similar characteristics, rather than analyze each security separately. Third, as discussed in section II and consistent with the proposal, it would be reasonable to assume a market impact of zero for the fund's daily and weekly liquid assets, since a fund could reasonably expect such assets to convert to cash without a market impact to fulfill redemptions (*e.g.,* because the assets are maturing shortly).[663] Fourth, since market impact costs of a transaction can be difficult to

[659] *See* section IV.C.4.b.i. and section IV.D.4. for a quantitative analysis of the frequency with which affected money market funds may be expected to exceed the 5% daily net redemption threshold.

[660] *See, e.g.,* ICI Comment Letter; State Street Comment Letter.

[661] *See, e.g.,* Yao Zeng, *A Dynamic Theory of Mutual Funds and Liquidity Management* (ESRB working paper no. 2017/42, Apr. 2017), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3723389* (retrieved from SSRN Elsevier database).

[662] *See, e.g.,* ICI Comment Letter.

[663] *See* Proposing Release, *supra* note 6, at section II.B.1.

estimate with certainty before a transaction occurs, the rule requires good faith estimates of these costs. Fifth, the final rule provides that if an institutional fund makes a good faith estimate that the amount of the liquidity fee would be below one basis point of the value of the shares redeemed, then the fund is not required to charge a liquidity fee.[664] Sixth, where a fund is unable to produce good faith estimates of the costs of selling a vertical slice, for example, when underlying security markets are frozen and transactions are scarce, the fund would use a default liquidity fee, as discussed in greater detail in the section that follows.

iv. Fee Amount: Default Fee When the Costs of Selling the Pro-Rata Share of Fund Holdings Cannot Be Calculated

As a baseline matter, rule 2a–7 includes a default liquidity fee provision for non-government money market funds with weekly liquid assets falling below 10% of their total assets. Under the final rule, if affected money market funds are unable to estimate the costs of selling the pro-rata share of fund holdings in good faith and supported by data, they would assess a default liquidity fee of 1%.

In the swing pricing context, the Commission received comments about difficulties in calculating transaction costs and market impact factors under tightly compressed timelines.[665] In addition, one commenter referenced a lack of, or narrow, bid-ask spreads, making calculation particularly difficult.[666] Another commenter questioned the feasibility of estimating market impact using the vertical slice approach.[667]

While the final rule imposes a liquidity fee framework, rather than a swing pricing requirement, the Commission has considered how difficulties in calculating the costs of selling the pro-rata share of fund holdings may impact operational feasibility of the liquidity fee requirement. Specifically, market impact factors and spread costs may be difficult to estimate precisely when many of the assets money market funds hold lack a liquid secondary market. This effect may be particularly acute in times of stress in short-term funding markets when transaction activity may freeze and trade and quotation data necessary for an accurate estimate of market impact factors may not be available. The ability of affected money market funds to assess a default liquidity fee under the final rule may enable affected money market funds to overcome these operational difficulties. Thus, the default liquidity fee may serve as an additional tool for affected money market funds facing redemption waves, and may reduce dilution of non-transacting shareholders and the first-mover advantage in redemptions.

The default liquidity fee is fixed at 1% and does not vary depending on the size of redemption flows, conditions in short-term funding markets, or characteristics of a fund's portfolio holdings. Thus, the default liquidity fee may, under some circumstances, exceed the liquidity cost of redemptions, which poses a cost to redeemers; or fall short of accurately capturing the liquidity cost of redemptions, thereby failing to recapture the dilution costs of redemptions faced by non-transacting shareholders. However, to the degree that discounts experienced by ultra-short bond exchange traded funds in the peak market stress of March 2020 may serve as a proxy for liquidity costs of money market funds, the liquidity fee is generally consistent with the range of money market fund liquidity costs during the same period.[668] Importantly, the default liquidity fee is not intended to precisely measure the liquidity cost of redemptions, but may enhance the ability of affected funds facing large redemptions to manage their liquidity in times of stress, reduce dilution costs borne by non-transacting investors, and decrease run risk. The final rule does not alter the amount of the default liquidity fee currently in effect under rule 2a–7, but provides for a different scope of application of the default fee that is not tied to publicly observable levels of weekly liquid assets.

To the degree that investors may perceive the default liquidity fee to be large, they may seek to redeem out of affected money market funds earlier during the onset of stress, which may accelerate redemptions during milder periods of stress in short-term funding markets. However, affected money market funds may have strong reputational incentives to compete on fees and may limit the application of the default fee to rare times of severe market stress. Importantly, the baseline application of the default fee under rule 2a–7 is tied to a fund's publicly observable level of weekly liquid assets, whereas liquidity fees under the final rule are triggered by same day net redemptions and a fund's assessment of the liquidity costs of such redemptions. This is expected to reduce run risk in affected funds relative to the current baseline. Crucially, any liquidity fee, including the default fee, accrues to the fund's non-transacting shareholders and enhances fund performance, which can incentivize some investors to invest in affected money-market funds, particularly during times of stress.

v. Fee Caps

The final rule would not cap mandatory liquidity fees triggered by the 5% net redemption threshold. Under the final rule, if an affected fund's good faith estimate of the liquidity cost of large redemptions, including spread and other transaction costs as well as market impact factors of the hypothetical sale of a pro-rata share of portfolio holdings, exceeds, for instance 2%, that larger fee would be assessed to redeeming investors on days on which a fund experiences net redemptions in excess of 5%. This element of the final rule will allow funds to recapture a greater share of the dilution costs of large redemptions and may reduce corresponding run risk, especially in times of stress.

Some commenters suggested that a liquidity fee framework should include a cap on liquidity fees,[669] for example, because a cap could provide investors with confidence that a fee would not exceed a specific threshold.[670] We acknowledge that the possibility of a large uncapped liquidity fee being applied to redemptions may reduce the attractiveness of affected money market funds for some investors. However, the possibility of large uncapped fees may also attract other investors into money market funds because non-transacting shareholders benefit from larger liquidity fees being charged to redeemers.

Commenters indicated that it is difficult to imagine any scenario where the cost of liquidity would exceed 2%, given the nature of money market fund portfolio holdings and limits on weighted average maturity and weighted average life, as well as historical price movements within affected funds.[671] We agree that funds are unlikely to charge fees in excess of 2% for three primary reasons. First, given the portfolio composition of affected money

[664] Amended rule 2a–7(c)(2)(iii)(D).

[665] *See, e.g.,* SIFMA AMG Comment Letter; BlackRock Comment Letter; Capital Group Comment Letter.

[666] *See, e.g.,* BlackRock Comment Letter.

[667] *See, e.g.,* ICI Comment Letter.

[668] *See* Anadu, Kenechukwu, et al., *Swing Pricing Calibration: A Simple Thought Exercise Using ETF Pricing Dynamics to Infer Swing Factors for Mutual Funds* (Jan 21, 2022), *available at https://ssrn.com/abstract=4014689* (retrieved from SSRN Elsevier database).

[669] *See, e.g.,* ICI Comment Letter; Morgan Stanley Comment Letter; SIFMA AMG Comment Letter; *see also* Federated Hermes Board Comment Letter.

[670] *See, e.g.,* Federated Hermes Comment Letter I; Western Asset Comment Letter.

[671] *Id.*

market funds, market impact factors are extremely unlikely to exceed 2% even under times of severe stress. For example, as discussed in section IV.C.4.a, during the market stress of March 2020, commercial paper spreads generally ranged between 20 and 50 basis points across maturities, far lower than the 2% level. As another example, one commenter indicated that their transaction costs during the crisis week of September 2008 were less than 0.6%.[672] Second, if short-term funding markets are under severe stress, there may be little transaction activity and funds may be unable to provide good faith estimates of the costs of selling the pro-rata slice of the fund portfolio, leading them to charge the default fee of 1%. Third, if funds are able to provide good faith estimates, but there is significant uncertainty about the costs of the vertical slice, for example, during severe stress, funds may face incentives from private party litigation to charge the default fee.

Thus, large liquidity fees (potentially in excess of 2%) are likely to be charged only when funds do not have sufficient liquid assets to absorb redemptions, are unable to roll down assets into weekly liquid assets given expected future outflows, and have transaction data from liquidating portfolio securities to support a higher fee. If a fund board's (or its delegate's) good faith estimates of liquidity costs do exceed 2%, then the lack of a cap for mandatory liquidity fees will allow funds to recapture more of the dilution of redemptions and manage liquidity to meet future redemptions. This aspect of the final rule may provide affected funds with flexibility to impose larger fees in crisis conditions when liquidity costs are high, which may enhance their resilience to stress.

vi. Discretionary Fees

Some commenters suggested that fund boards should have discretion to impose liquidity fees when in the best interest of the fund and its investors.[673] The final amendments retain a discretionary liquidity fee provision, allowing non-government funds to charge discretionary liquidity fees when the majority of the fund board of directors (or its delegate) determine it to be in the best interest of the fund. The discretionary liquidity fee provision provides more discretion to fund boards (or their delegates) for determining when to impose fees and in what amount in comparison to the mandatory liquidity fee provision. While this discretion is generally consistent with the baseline, the final rule removes the regulatory weekly liquid asset threshold, which created incentives to redeem as funds approached the regulatory weekly liquid asset threshold.

This aspect of the final rule may involve several benefits. First, it may provide a broader scope of money market funds, including retail and government funds, flexibility in using liquidity fees as an anti-dilution tool.[674] Moreover, it may allow institutional prime and institutional tax-exempt funds to charge liquidity fees earlier in the redemption wave or when liquidity costs of even smaller redemptions are particularly high. Thus, it may enhance the ability of money market funds to manage their liquidity and protect non-transacting shareholders by reducing the dilution costs of redemptions that they bear. Second, it may reduce the ability of redeeming investors to predict whether a liquidity fee would apply on any given day and strategically time redemptions around the likely application of liquidity fees. To the degree that affected money market funds will compete on liquidity fees and may face collective action problems, discretionary liquidity fees may be infrequently applied, reducing the above benefits of this element of the final amendments.

Since liquidity fees charged to redeemers benefit non-transacting shareholders and may enhance reported fund performance, some fund managers may be incentivized to frequently charge discretionary liquidity fees. However, this incentive may be dampened or altogether outweighed by competitive pressures on reported fees and the sensitivity of fund flows to fees. In addition, the frequent assessment of discretionary fees would increase the variability of realized returns for redeemers and reduce the attractiveness of such funds for investors that rely on money market funds for cash management, which can create a counterbalancing market disincentive to the frequent application of discretionary fees. Moreover, the final rule would cap discretionary fees at 2%, which may reduce the ability of affected money market funds to overcharge redeemers for liquidity costs. Finally, the final rule requires fund boards or a delegate overseen by the board to make a determination that it is in the best interest of shareholders to assess such a fee.

5. Amendments Related to Potential Negative Interest Rates

As discussed in the proposal, in the event stable NAV funds begin to experience negative yields, they will be able to convert to a floating NAV.[675] As modified in this release, funds also will be able to engage in share cancellation (sometimes referred to as reverse distribution mechanism, or ''RDM'') in the event of negative yields. Funds engaging in share cancellation would be required to comply with specified conditions in the final rule, including that the fund provide timely, concise, and plain-English disclosure to investors.

Allowing stable NAV funds to use a reverse distribution mechanism in the event of negative fund yields would reduce NAV fluctuations in a negative yield environment, which may preserve the use of stable NAV funds for sweep accounts. In the event money market fund yields turn negative, this amendment may, thus, allow more types of investors to continue to use these products than would be the case if the rule required all stable NAV money market funds to convert to a floating NAV. The Commission has received a number of comments in support of providing the flexibility of stable NAV funds to use an RDM or similar mechanism, in addition to the proposed conversion to a floating NAV.[676] The Commission also recognizes that an RDM is economically equivalent to a floating NAV, and that many investors may prefer a stable NAV.

As discussed in section II, under an RDM, investors would observe a stable share price but a declining number of shares for their investment when a fund generates a negative gross yield. This may decrease the transparency and

[672] *See, e.g.,* Comment Letter of Fidelity Investments on File No. S7–03–13 (Apr. 22, 2014), *available at https://www.sec.gov/comments/s7-03-13/s70313-339.pdf* (Exhibit 4). Importantly, this is an estimate of actual transaction costs incurred by the market participant and does not include market impact or the vertical slice assumption.

[673] *See, e.g.,* ICI Comment Letter; Schwab Comment Letter; Federated Hermes Comment Letter I; Federated Hermes Comment Letter II; Federated Hermes Board Comment Letter; Invesco Comment Letter; SIFMA AMG Comment Letter; Americans for Tax Reform Comment Letter.

[674] Like the current rule 2a–7, a government money market fund may choose to rely on the ability to impose liquidity fees. *See* section II.

[675] As discussed in section V.B, the Commission estimates the total annual costs attributable to the information collection requirements in the amendments allowing share cancellation will be $969,722 for all affected funds. This cost estimate includes both initial and ongoing costs with the former being amortized over three years.

[676] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; Federated Hermes Comment Letter I; Allspring Funds Comment Letter; Fidelity Comment Letter; BNY Mellon Comment Letter; State Street Comment Letter; Sen. Toomey Comment Letter; Americans for Tax Reform Comment Letter; Dechert Comment Letter; CCMR Comment Letter; IDC Comment Letter.

salience of negative fund yields to investors, particularly for less sophisticated retail investors.[677] Importantly, many stable NAV funds (government funds) are offered to a mix of more sophisticated institutional and retail clientele. This may give rise to informational asymmetries about the performance of the same stable NAV funds across investors and reduce comparability of performance across stable NAV funds. Crucially, these informational asymmetries may be mitigated by the final rule's requirement that stable NAV funds seeking to use an RDM provide timely, concise, and plain-English disclosures, including in prospectuses and in account statements or in a separate writing accompanying the account statements. While stable NAV funds seeking to use an RDM would bear costs of producing such disclosures, they would only choose to do so if the costs of disclosures arising out of the use of an RDM are lower than the costs of floating the NAV. Overall, as discussed in section II, investors may benefit from the ability to continue to invest in stable NAV funds when interest rates are negative, and the required disclosures may help inform investors about differences between an RDM and a floating NAV.

In contrast with the proposal, the final amendments do not require stable NAV money market funds to keep records identifying which intermediaries they were able to identify as being able to process orders at a floating NAV and to no longer transact with those intermediaries who are not able to process orders at a floating NAV. This aspect of the final rule obviates the need for intermediaries to upgrade their systems if they are unable to process transactions in stable NAV funds at a floating NAV. This may avoid disruptions to distribution networks of stable NAV funds if some of their intermediaries would be unable or unwilling to upgrade systems to process transactions at a floating NAV.

The magnitude of these economic effects may be significantly attenuated by two factors. First, negative interest rates have not occurred in the United States, and persistent gross negative yields may be unlikely to occur.[678] Hence, money market funds are not currently implementing RDMs and both the benefits and the costs of these amendments may not materialize. Second, stable NAV funds may not experience the same magnitude of redemptions observed in public institutional prime and institutional tax-exempt funds, for example in March 2020.[679] Notably, in the long run, the initial shock of negative rates that leads to redemptions from money market funds might reverse due to the lack of alternative vehicles to store cash for a short term.

6. Disclosures

a. Benefits and Costs of the Prompt Notice of Liquidity Threshold Events on Form N–CR and Board Reporting

The final amendments will require money market funds to file a Form N–CR report whenever a fund has invested less than 25% of its total assets in weekly liquid assets or less than 12.5% of its total assets in daily liquid assets.

As a baseline matter, daily and weekly liquid assets are currently required to be disclosed on fund websites on a daily basis. Relative to that baseline, the primary benefits of the final Form N–CR reporting requirement may be in providing additional information about the circumstances of a fund's significantly reduced liquidity levels. Information about the circumstances of a fund's significantly reduced liquidity levels may help investors better analyze a fund's liquidity management strategies and assess risks of dilution. The Commission has received comments that public reporting of liquidity threshold events can increase transparency of money market fund liquidity management practices to investors and may help increase the salience of a fund's daily and weekly liquid assets to investors, especially to less active and less sophisticated investors.[680] Some commenters suggested this reporting should be confidential.[681] As discussed in section II, we believe investors would benefit from having contextual information to understand the cause of a fund's declining liquidity, which may facilitate their assessment of a fund's risks and ability to meet redemptions. This requirement may enhance transparency about money market fund liquidity during times of stress.

Publication of notices surrounding liquidity threshold events may inform investors about the reasons behind the threshold event. To the degree that some funds' liquidity threshold events may be indicative of persistent liquidity problems or mismanagement of liquidity risk, and to the extent that notices may better inform investors about such causes (relative to baseline website disclosures of liquidity levels), publication of such notices may trigger investor redemptions out of the most distressed funds. While it is difficult to predict investor behavior, the final disclosure requirements may reduce information asymmetries between investors and funds about their liquidity management, and would provide funds with liquidity fees as a tool to manage redemptions, such that redeemers would be charged for the true liquidity cost of their redemptions. In addition, funds with lower weekly and daily liquid assets would charge higher fees due to higher market impact costs, and the liquidity fee under the vertical slice assumption would charge redeemers the liquidity costs they impose on the fund, further dis-incentivizing strategic redemptions.

The final amendments will also require money market funds to notify their boards when they drop below the 12.5% daily and 25% weekly liquidity asset thresholds, as discussed in section II. Since the final amendments will require that liquidity threshold events are reported on Form N–CR, funds will likely routinely notify the board of such events without an explicit board notification requirement. One commenter noted that the current policies and procedures of its members typically include provisions to report to the board at specified levels of liquidity, thus suggesting that the proposed board reporting is already occurring in practice.[682] To the degree that board reporting is already a part of best practices for fund managers, this would reduce the magnitude of the benefits and costs of this final requirement. However, to the degree that some fund boards may not be notified of some events subject to Form N–CR reporting or of significant declines in liquidity, the board notification requirement could enhance the oversight of fund boards over liquidity management, particularly during periods of stress.

The final amendments to Form N–CR will impose direct compliance costs by imposing reporting burdens discussed in section V.D.[683] While we

[677] *See, e.g.,* Northern Trust Comment Letter; CFA Comment Letter.

[678] The weighted average maturity (weighted average life) of money markets funds must be 60 (120) days or less, meaning it may take several weeks before securities with a positive yield mature and gross yields turn negative.

[679] *See, e.g.,* ICI Comment Letter; Morgan Stanley Comment Letter.

[680] *See, e.g.,* CFA Comment Letter; Better Markets Comment Letter.

[681] *See, e.g.,* ICI Comment Letter; Federated Hermes Comment Letter I; Invesco Comment Letter; Schwab Comment Letter (expressing support for ICI's perspective); SIFMA AMG Comment Letter; Bancorp Comment Letter.

[682] *See, e.g.,* SIFMA AMG Comment Letter.

[683] As discussed in section V.D, the Commission estimates a total internal time cost of the information collection requirements associated with

Continued

acknowledge that Form N–CR filers may bear some additional reporting costs as a result of the amendments, as one commenter suggested, we believe these costs will generally be related to funds adjusting their systems to a different data language. Due to economies of scale, such costs may be more easily borne by larger fund families. In addition, the prompt notice requirement may give rise to two sets of costs. First, the requirement may lead fund managers to manage their portfolios specifically to try to avoid a reporting event, rather than in a way that is most efficient for fund shareholders. Second, this aspect of the final rule may result in money market fund managers spending compliance resources on amending Form N–CR to describe the circumstances of the liquidity threshold event, which may divert managerial resources away from managing redemptions in times of stress. Costs borne by money market funds may be passed along to investors in the form of higher fees and expenses. However, as discussed above, we believe such costs are justified by the promptness of the notice requirement which may enhance Commission oversight and transparency to investors, incentivize funds to closely monitor their liquidity levels, and ultimately better protect investors.

b. Benefits and Costs of the Form N–MFP Amendments

Final amendments to Form N–MFP will require reporting of certain daily data points on a monthly basis, of securities that prime funds have disposed of before maturity, of the concentration of money market fund shareholders and the composition of institutional money market funds' shareholders, and of additional information about repurchase agreement transactions, among other changes. In addition, we are amending Form N–MFP to require money market funds to report the date on which the liquidity fee was applied and the amount of the liquidity fee applied by the fund.

Broadly, the final amendments to Form N–MFP may make the form more usable by filers, regulators, and investors, and may increase transparency around money market fund activities in three ways. First, the requirement that the funds report daily information about their daily and weekly liquid assets, flows, and NAV will reduce costs of accessing this information relative to the baseline of routinely accessing and downloading information across many fund websites and will provide a long-term repository of this information for all funds. Second, additional information about fund repo activities will enable investors and the Commission to better assess fund liquidity risks and oversee the industry. Third, information about shareholder concentration and composition can help the Commission and investors understand and evaluate potential redemption and liquidity risks.

In addition, the final amendments add disclosure requirements to Form N–MFP to capture information about the relevant funds' use of liquidity fees. These amendments are expected to benefit investors in money market funds by reducing information asymmetries between funds and investors about these funds' liquidity fee practices. Since liquidity fees have not been broadly used by U.S. money market funds, the purpose of the disclosure requirement is, thus, to inform investors about the manner in which affected money market funds implement the liquidity fee framework. Such transparency may result in greater allocative efficiency as investors with low tolerance of liquidity risk and costs may choose to reallocate capital to money market funds that have lower liquidity risk and costs. In addition, to the degree that uncertainty about the final liquidity fee framework may reduce the attractiveness of affected money market funds to investors, the final amendments requiring disclosures about liquidity fees may reduce information asymmetries between money market funds and their investors, which may dampen those adverse effects.

The final amendments to Form N–MFP will impose initial and ongoing PRA costs, as discussed in section V below.[684] The Commission continues to believe that money market funds generally already maintain the information they will be required to report on Form N–MFP pursuant to other regulatory requirements or in the ordinary course of business. However, the Commission continues to recognize that affected funds would incur some costs in reporting the information, particularly costs of reporting certain information with more frequency.[685] Due to economies of scale, such costs may be more easily borne by larger fund families, and costs borne by money market funds may be passed along to investors in the form of higher fees and expenses. The Commission also received comments that the proposed requirements related to reporting of shareholder concentration and composition, as well as lot-level reporting may give rise to privacy and related costs,[686] as well as predatory trading costs.[687] As discussed in greater detail in section II, to reduce such costs and concerns, the final rule does not require money market money market funds to disclose the names of beneficial or record owners who hold 5% or more of the shares outstanding in the relevant class, but only the type of owner, as suggested by some commenters.[688] In addition, as discussed in section II, the final rule does not impose lot-level reporting requirements.

One commenter opposed the proposal to require liquidity, net asset value, and flow data to be reported as of the close of business on each business day of each month on the basis that it would be unduly burdensome and without any added benefit.[689] As discussed in the proposal, daily data based on information collected from funds' websites provided by private data vendors can be incomplete, and may have limited utility for Commission oversight and analysis. Moreover, money market funds are, in general, already required to provide on their websites the same data that we are requiring be reported on Form N–MFP. Thus, we believe that the burdens of the proposed changes on money market funds may be small or de minimis. In addition, the final disclosures concerning liquidity fees may create incentives for money market funds to compete on this dimension. Specifically, institutional investors that use institutional money market funds for cash management and prefer lower or zero liquidity fees may move capital from money market funds that charged higher historical fees to funds with lower fees or those that have never charged fees. This may incentivize fund managers to manage their liquidity so as to avoid charging mandatory or discretionary fees. However, while

the amendments to Form N–CR of $8,244 and total annual external cost burden of $1,187 for all affected funds.

[684] As discussed in section V.C, the Commission estimates a total annual internal time cost of the information collection requirements of the amendments to Form N–MFP of $601,002 and total annual external cost burden of $268,128 for all affected funds. The cost estimates include both initial and ongoing costs with the former being amortized over three years.

[685] *See, e.g.,* Federated Hermes Comment Letter I.

[686] *See, e.g.,* CFA Comment Letter; Federated Hermes Comment Letter I; Invesco Comment Letter; Dechert Comment Letter; Schwab Comment Letter; ICI Comment Letter; Bancorp Comment Letter; SIFMA AMG Comment Letter; Northern Trust Comment Letter; CCMR Comment Letter.

[687] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; BlackRock Comment Letter; CCMR Comment Letter.

[688] *See, e.g.,* Federated Hermes Comment Letter I; BlackRock Comment Letter.

[689] *See* Federated Hermes Comment Letter I.

liquidity fees charge redeemers, they benefit investors remaining in the fund, which may make funds actively using liquidity fees more attractive to some investors.

c. Benefits and Costs of Requirements Related to Identifying Information on Form N–CR and Form N–MFP

The final amendments will also require the registrant name, series name, related definitions, and LEIs for the registrant and series on Form N–CR. In addition, the final amendments will require money market funds to report LEIs for the series on Form N–MFP. The LEI is used by numerous domestic and international regulatory regimes for identification purposes.[690] As such, requiring these additional disclosures could enable data users such as investors and regulators to cross-reference the data reported on Form N–CR with data reported on Form N–MFP and with data received from other sources more easily, thereby expanding the scope of information available to such data users in their assessments.[691] All money market funds are already required to have registrant and series LEIs due to baseline Form N–CEN reporting requirements, as discussed in section II.F. The final amendments to Form N–MFP will also require other information to better identify different types of money market funds, such as amendments to better identify Treasury funds and funds that are used solely by affiliates and other related parties. These amendments will help the Commission and market participants to identify certain categories of money market funds more efficiently. However, the final requirements to improve identifying information may give rise to direct compliance costs associated with amending reporting on Forms N–CR and N–MFP, as discussed in section V.

In addition to the entity identification information (*e.g.,* registrant name, series name, related definitions, and LEIs) discussed above, the final amendments will also expand security identification information by adding a CUSIP requirement for collateral securities that money market funds report on Form N–MFP. CUSIP numbers are proprietary security identifiers and their use (including storage, assignment, and distribution) entails licensing restrictions and fees that vary based on factors such as the number of CUSIP numbers used.[692] Money market funds are currently required to disclose CUSIP numbers for each holding they report on Form N–MFP.[693] As such, the incremental compliance cost on money market funds associated with the CUSIP requirement, compared to the baseline, will be limited to those costs, if any, incurred by money market funds as a result of storing additional CUSIP numbers (to the extent money market funds do not already store CUSIP numbers for their collateral securities).[694]

As discussed in section II, one commenter supported the CUSIP requirement and agreed that money market fund managers will not incur additional costs or burden due to the CUSIP requirement.[695] By contrast, one commenter opposed the CUSIP requirement due to its limited utility and the costs involved.[696] However, we believe the CUSIP requirement will be useful, because it will provide more precise and consistent identification of the securities that money market funds use as collateral, thus facilitating staff and public analysis of money market fund activity. Also, as noted, we do not believe the CUSIP requirement will cause money market funds to incur incremental additional costs, because they are subject to existing CUSIP reporting obligations.

d. Benefits and Costs of Structured Data Requirement for Form N–CR

The final amendments will require money market funds to submit reports on Form N–CR using a structured, machine-readable data language—specifically, in an XML-based language created specifically for Form N–CR (''N–CR-specific XML'').[697] Currently, money market funds submit reports on Form N–CR in HTML or ASCII, neither of which is a structured data language.[698] As discussed in section II, the Commission received one comment that viewed the final structured data requirement as a reporting enhancement that will increase transparency for institutional and retail investors, and allow regulators and policymakers to better assess the state of the financial system.[699] By contrast, one commenter opposed this requirement, indicating that a structured data language requirement is costly and not used by investors.[700] This aspect of the final amendments may facilitate the use and analysis, both by the public and by the Commission, of the event-related disclosures reported by money market funds on Form N–CR, as compared to the current baseline. The improved usability of Form N–CR could enhance market and Commission monitoring and analysis of reported events, thus providing greater transparency into potential risks associated with money market funds on an individual level and a population level.

Importantly, the incremental costs associated with requiring money market funds to submit reports on Form N–CR in N–CR-specific XML, compared to the baseline of submitting Form N–CR in HTML or ASCII, may be low given that money market funds already utilize XML-based languages to meet similar requirements in their other reporting, and can utilize their existing capabilities for preparing and submitting Form N–CR.[701] In addition, money market funds will be given the option of filing Form N–CR using a fillable web form that will render into N–CR-specific XML in the Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system, rather than filing directly in N–CR-specific XML using the technical specifications published on the Commission's website. However, under the final rule, money market funds that choose to submit Form N–CR directly in N–CR-specific XML (rather than use the fillable web form) will

[690] Other regulators with LEI requirements include the U.S. Federal Reserve, European Union's (E.U.'s) MiFid II regime, and Canada's IIROC; the LEI is also used by private market participants for risk management and operational efficiency purposes. *See https://www.leiroc.org/lei/uses.htm.*

[691] Fees and restrictions are not imposed for the usage of or access to LEIs.

[692] The CUSIP system (formally known as CUSIP Global Services) is owned by the American Bankers Association and managed by FactSet Research Systems Inc. *See* CGS History, *available at https://www.cusip.com/about/history.html*, and License Fees, *available at https://www.cusip.com/services/license-fees.html.*

[693] *See* Item C.3 of Form N–MFP.

[694] CUSIP license costs vary based upon, among other factors, the quantity of CUSIP numbers to be used, on a tiered model, with the lowest tier being up to 500 CUSIP numbers. *See* CGS License Structure, *available at https://www.cusip.com/services/license-fees.html#/licenseStructure.* Based on our understanding of current CUSIP licenses and usage among money market funds, we do not believe the CUSIP reporting requirement for collateral securities is likely to impose incremental compliance costs on money market funds by moving them into a new CUSIP license pricing tier.

[695] *See* ABA Comment Letter II. This commenter additionally asserted that a discussion of licensing restrictions is not relevant to the added CUSIP requirement under final amendments, and that the concept of CUSIP being proprietary has never applied to transactional use or regulatory reporting. However, the commenter did not specify which particular provisions in the license agreement set forth exceptions for regulatory reporting and transactional use.

[696] *See* Federated Hermes Comment Letter I.

[697] This would be consistent with the approach used for other XML-based structured data languages created by the Commission for certain specific EDGAR Forms, including Form N–CEN and Form N–MFP. *See* Current EDGAR Technical Specifications, *available at https://www.sec.gov/edgar/filer-information/current-edgar-technical-specifications.*

[698] *See supra* note 400.

[699] *See, e.g.,* Western Asset Comment Letter.

[700] *See* Federated Hermes Comment Letter I.

[701] *See supra* note 400.

incur the incremental compliance costs of updating their existing preparation and submission processes to incorporate the new technical schema for N–CR-specific XML.[702]

7. Calculation of Weighted Average Maturity and Weighted Average Life

The Commission is adopting amendments to rule 2a–7 to specify that WAM and WAL must be calculated based on percentage of each security's market value in the portfolio, rather than based on amortized cost of each portfolio security. These amendments will enhance consistency and comparability of disclosures by money market funds in data reported to the Commission and provided on fund websites and, as discussed in section II, commenters generally supported these amendments.[703] One commenter indicated that the fractional difference between the weighted average maturity and weighted average life calculated with amortized cost versus market value would not meaningfully impact a fund's weighted average maturity or weighted average life.[704] As discussed above, while the difference between a fund's weighted average maturity or weighted average life calculated using amortized cost versus market value is likely to be small in many circumstances, it may be more significant when a security's issuer experiences a credit event, during periods of market stress, or when interest rates rise rapidly, particularly for assets with longer maturities. The Commission continues to believe that a consistent definition of WAM and WAL across funds can enhance transparency for investors seeking to assess the risk of various money market funds and may increase allocative efficiency. Moreover, greater comparability of WAM and WAL across money market funds may benefit investors and enhance Commission oversight of risks in money market funds.

In the Proposing Release, the Commission stated that these amendments are not expected to give rise to direct compliance costs. One commenter indicated that funds may be required to make additional operational changes to comply with the proposed calculation,[705] but did not provide any estimates of related costs. The Commission is unable to quantify the costs of such potential operational changes because they may depend on the extent to which funds and fund families that use amortized cost in their WAM and WAL calculations are already equipped to use market value in such calculations and, if they are already equipped to do so, whether the ability to instead use market value is automated or requires manual involvement in the calculation.[706] However, as discussed in section II, the Commission continues to believe that a majority of money market funds already calculate WAM and WAL based on the percentage of each security's market value in the portfolio and all types of money market funds determine the market values of their portfolio holdings for other purposes, which may limit the extent of operational changes needed.[707] Importantly, these amendments may enhance the consistency of WAM and WAL calculations across funds, which may better inform investors and enhance Commission oversight.

8. Form PF Requirements for Large Liquidity Fund Advisers

As discussed in section II, the amendments to section 3 of Form PF include requirements for additional and more granular information that large advisers to private liquidity funds will have to provide regarding operational information and assets, as well as portfolio holdings, financing, and investor information.

The amendments will require large liquidity funds to report substantially the same information that money market fund will report on Form N–MFP. Thus, in combination with the final Form N–MFP amendments, Form PF amendments will help provide a more complete picture of the short-term financing markets, in which liquidity funds and money market funds invest. In turn, they may enhance the Commission's and FSOC's ability to assess the potential market and systemic risks presented by liquidity funds' activities.[708] One commenter questioned the value added of the data.[709] The Commission continues to believe that additional and more granular information in the final amendments will enable the Commission and FSOC to better assess liquidity funds' asset turnover, liquidity management and secondary market activities, subscriptions and redemptions, and ownership type and concentration. This information may be used to analyze funds' liquidity and the susceptibility of funds with specific characteristics to the risk of runs, which may give rise to systemic risk concerns. In addition, the information can be used for identifying trends in the liquidity funds industry during normal market conditions and for assessing deviations from those trends that could potentially serve as signals for changes in the short-term funding markets. Also, amendments to section 3 of Form PF will improve comparability of data across liquidity funds and money market funds, which may further enhance oversight.

These additional tools and data may enable the Commission and FSOC to better anticipate and deal with potential systemic and investor harm risks associated with activities in the liquidity funds industry and overall markets for short-term financing. This may increase the resilience of short-term financing markets and enhance investor confidence in the U.S. markets for short-term financing, which could facilitate capital formation.

The final amendments to Form PF will lead to certain additional costs for advisers of large liquidity funds. While we are unable to quantify the full costs of the final Form PF amendments for advisers of large liquidity funds, we are able to estimate some of the costs, specifically the costs related to information collection requirements as defined by the PRA. The information collection costs are quantified in section V.F.[710] Advisers may pass along all or a portion of these costs to large liquidity fund investors, and the degree to which investors may ultimately bear such costs may depend on, among others, how advisers choose to comply with the final

[702] *See infra* section V.

[703] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; Capital Group Comment Letter.

[704] *See* Federated Hermes Comment Letter I.

[705] *Id.*

[706] For example, the commenter stated that its retail and government money market funds currently use amortized cost in their WAM and WAL calculations but are equipped to immediately shift to using market value if an issuer of portfolio securities had a credit problem. *See* Federated Hermes Comment Letter I.

[707] Money market funds that use a floating NAV use market values when determining a fund's NAV, while money market funds that maintain a stable NAV are required to use market values to calculate their market-based price at least daily.

[708] *See, e.g.,* Better Markets Comment Letter on File No. S7–01–22; Loubriel Comment Letter on File No. S7–01–22.

[709] *See* NYC Bar Comment Letter on File No. S7–01–22. For more general criticism of benefits of Form PF, *see, e.g.,* Comment Letter of Alternative Investment Management Association and Alternative Credit Council on File No. S7–01–22 (Mar. 21, 2022); Comment Letter of Teachers Insurance and Annuity Association of America on File No. S7–01–22 (Mar. 21, 2022) (''TIAA Comment Letter on File No. S7–01–22''); Comment Letter of Real Estate Board of New York (Mar. 21, 2022). Some commenters argued that sophisticated investors do not require monitoring of their private fund investments, *see, e.g.,* Comment Letter of Center for Capital Markets Competitiveness, U.S. Chamber of Commerce on File No. S7–01–22 (Mar. 21, 2022); Comment Letter of SIFMA on File No. S7–01–22 (Feb. 11, 2022).

[710] As discussed in section V.F, the Commission estimates a total cost increase associated with the information collection requirements of amended Form PF of $9,931 per initial filing and $3,331 per quarterly filing.

amendments, competition among large liquidity fund advisers, and competition between large liquidity funds relative to money market funds, among others.

The costs to advisers of large liquidity funds may include both direct compliance costs and indirect costs, which may be relatively larger for smaller advisers.[711] The final amendments aimed at improving data quality and comparability, such as requiring advisers to identify any ''other unique identifier'' they use to identify portfolio securities, may impose limited direct costs on advisers given that advisers already accommodate similar requirements in their current Form PF and Form ADV reporting and can utilize their existing capabilities for preparing and submitting an updated Form PF. Most of the costs are likely to arise from the requirements to report additional and more granular information on Form PF, such as requiring advisers to distinguish between U.S. Government agency debt categorized as a coupon-paying note and a zero-coupon note. For existing section 3, the direct costs associated with the final amendments to section 3 will mainly include an initial cost to set up a system for collecting and verifying additional more granular information, and limited ongoing costs associated with periodic reporting of this additional information.[712]

Indirect costs for advisers will include the costs associated with other actions that advisers may decide to undertake in light of the additional reporting requirements. Specifically, to the extent that the final amendments provide an incentive for advisers to improve internal controls and devote additional time and resources to managing their risk exposures and enhancing investor protection, this may result in additional expenses for advisers, some of which may be passed on to the funds and their investors.

Form PF collects confidential information about private funds and their trading strategies, and the inadvertent public disclosure of such competitively sensitive and proprietary information could adversely affect the funds and their investors. However, we anticipate that these adverse effects will be mitigated by certain aspects of the Form PF reporting requirements and controls and systems designed by the Commission for handling the data. For example, with the exception of select questions, such as those relating to restructurings/recapitalizations of portfolio companies and investments in different levels of the same portfolio company by funds advised by the adviser and its related person, Form PF data generally could not, on its own, be used to identify individual investment positions. The Commission has controls and systems for the use and handling of the modified and new Form PF data in a manner that reflects the sensitivity of the data and is consistent with the maintenance of its confidentiality. The Commission has substantial experience with the storage and use of nonpublic information reported on Form PF.

D. Alternatives[713]

1. Alternatives to the Removal of Temporary Redemption Gates

The final amendments could have replaced the 30% weekly liquid asset threshold for the discretionary imposition of temporary redemption gates with a different threshold. This alternative would allow money market funds to impose gates during large redemptions to reduce some of the dilution costs during large redemptions. However, as discussed above, we believe that a weekly liquid asset threshold for gates could trigger runs on money market funds in times of stress. Under the final amendments, money market funds are still able to reduce dilution costs during large redemptions. Under current rule 22e–3, money market funds are permitted to impose permanent suspensions of redemptions where a fund's weekly liquid assets drop below 10% and the fund determines to liquidate the fund. In addition, institutional prime and institutional tax-exempt money market funds are required to charge mandatory liquidity fees based on a same day net redemption threshold that may be less susceptible to run risk, and money market funds retain broad flexibility with respect to the imposition of discretionary liquidity fees without any regulatory thresholds.

The final amendments could also have modified the trigger for redemption gates. The final rule could have eliminated the tie between the possible imposition of gates and a weekly liquid asset threshold without eliminating funds' ability to impose gates outside of liquidation, for example, by allowing boards complete discretion in imposing gates.[714] Alternatively, the final rule could have permitted funds to impose redemption gates after confidentially seeking regulatory approval. Under these alternatives, investors could, at any time, find themselves subject to a gate which would mean they would be unable to access their funds for cash management purposes. As a result, these alternatives would significantly reduce the usefulness of these funds for investors, as they function as a means of cash management. Moreover, there would be few if any offsetting benefits of these alternatives in terms of discouraging runs relative to the final rule.

2. Alternatives to the Removal of the Tie Between Weekly Liquid Assets and Discretionary Liquidity Fees

The final amendments could have replaced the 30% weekly liquid asset threshold for the imposition of discretionary liquidity fees with a different weekly liquid asset threshold. This alternative would allow money market funds to impose discretionary liquidity fees during redemption waves to reduce some of the dilution costs of large redemptions. However, as discussed above, we believe that, compared to net redemption thresholds, weekly liquid asset thresholds leave funds more vulnerable to strategic redemptions. The mandatory and discretionary fees under the final rule are expected to provide tools for money market funds to address dilution while reducing incentives for strategic redemptions and corresponding run risk.

3. Alternatives to the Final Increases in Liquidity Requirements

a. Alternative Thresholds

The final amendments could have included a variety of alternative daily and weekly liquid asset thresholds. More specifically, the Commission could have increased minimum liquidity thresholds to 20% daily liquid assets and 40% weekly liquid assets thresholds.[715]

[711] Some commenters emphasized, generally, disproportionate costs of Form PF to smaller advisers. *See, e.g.,* Comment Letter of Managed Funds Association on File No. S7–01–22 (Mar. 21, 2022); TIAA Comment Letter on File No. S7–01–22; Comment Letter of Real Estate Roundtable on File No. S7–01–22 (Mar. 21, 2022).

[712] Section V estimates direct internal compliance costs for existing section 3 filers associated with the preparation and reporting of additional and more granular information by large liquidity fund advisers. It is estimated that there will be no additional direct external costs and no changes to filing fees associated with the proposed amendments to section 3.

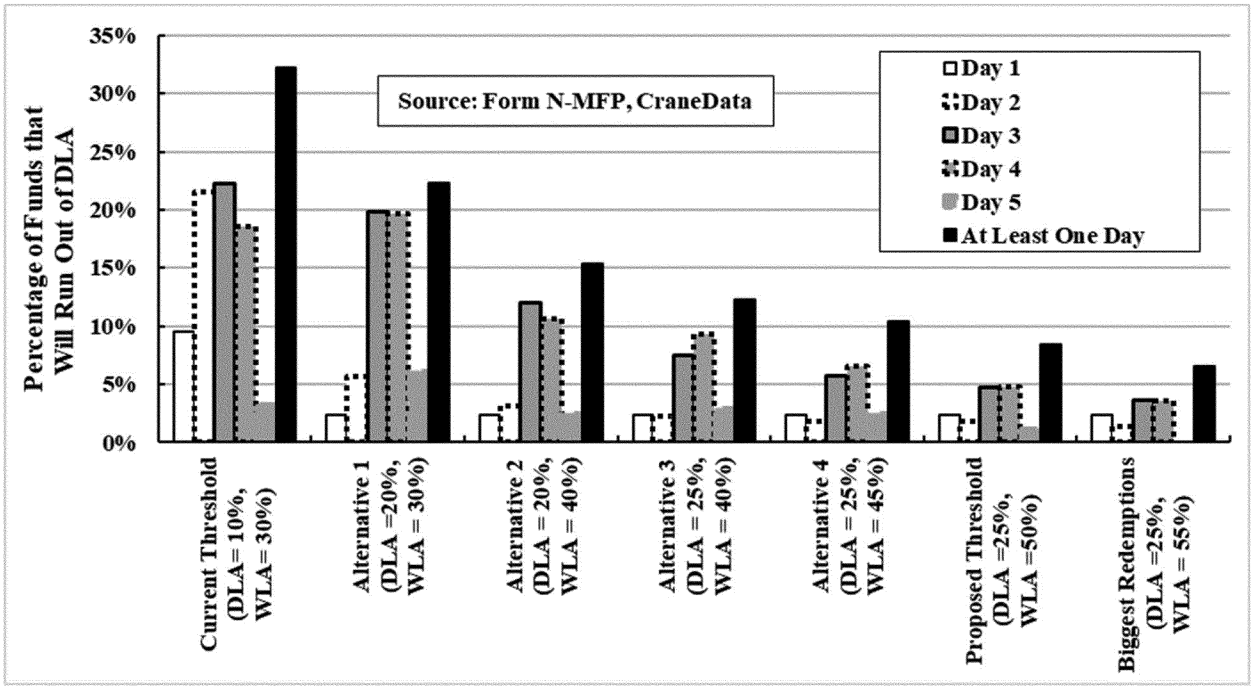
[713] This discussion supplements the discussion of alternatives in other sections of the release.

[714] *See, e.g.,* Federated Hermes Comment Letter I; Federated Hermes Board Comment Letter; Cato Inst. Comment Letter; Dechert Comment Letter.

[715] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; BlackRock Comment Letter; JP Morgan Comment Letter; State Street Comment Letter; Western Asset Comment Letter; Invesco Comment Letter; Healthy Markets Association Comment Letter.

In the Proposing Release, the Commission quantified the potential effect of various liquidity thresholds on the probability that money market funds would confront liquidity stress, modeling stress in publicly offered institutional prime fund portfolios using the distribution of redemptions observed during the week of March 16 to 20, 2020, (''stressed week'') at various starting levels of daily and weekly liquid assets.[716] Using the same methodology (and subject to the same caveats), Figure 13 below plots the probability that a fund will run out of daily liquid assets on a given day of the stressed week for a variety of thresholds, including those suggested by commenters.[717] For the final thresholds of weekly liquid assets at 50% and daily liquid assets at 25%, Figure 13 shows that about 8.4% of funds would deplete daily liquid assets and be unable to absorb redemptions out of daily liquid assets on at least one of the five stressed days. By contrast, a threshold of 20% daily liquid assets and 40% weekly liquid assets would approximately double the estimate of funds that would deplete daily liquidity to meet redemptions on at least one of the days of a stressed week (to approximately 15.4%). As referenced above, the largest weekly and daily redemption during the week of March 16 to 20, 2020, was approximately 55% and 25% respectively. Thus, an approach aimed at eliminating the risk of funds having insufficient liquid assets to absorb redemptions (using redemption data from March 16 to 20, 2020) would require funds to hold more than 55% of weekly and at least 25% of daily liquid assets. Lower thresholds increase the probability that some funds may deplete their liquid assets to meet redemptions, but also reduce the adverse impacts described above.

Figure 13—The Probability That a Fund Will Run Out of Daily Liquid Assets Under Different Minimum Liquidity Thresholds



Similarly, Table 12 quantifies the daily probability that a publicly offered institutional prime fund depletes daily liquid assets to meet redemptions under four scenarios: the current baseline daily and weekly liquid asset thresholds, thresholds based on the largest daily and weekly redemption during the stressed week; proposed daily and weekly liquid assets thresholds; and several alternatives suggested by commenters.[718] The baseline scenario would require no change for money market funds; the ''biggest redemptions'' alternative would require approximately 8% of all prime funds (including both institutional and retail prime funds) to increase their daily liquid assets and approximately 34% of all prime funds to increase their weekly liquid assets.

[716] 87 FR 7310.

[717] *See supra* note 715. *See also* IIF Comment Letter (suggesting 20% daily liquid asset and 30% weekly liquid asset thresholds); Bancorp Comment Letter (suggesting 25% daily liquid asset and 40% weekly liquid asset thresholds); Morgan Stanley Comment Letter (suggesting 25% daily liquid asset and 45% weekly liquid asset thresholds).

[718] *See, e.g.,* IIF Comment Letter (suggesting 20% daily liquid asset and 30% weekly liquid asset thresholds); Bancorp Comment Letter (suggesting 25% daily liquid asset and 40% weekly liquid asset thresholds); Morgan Stanley Comment Letter (suggesting 25% daily liquid asset and 45% weekly liquid asset thresholds). Several commenters suggested thresholds of 20% daily liquid assets and 40% weekly liquid assets. *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; BlackRock Comment Letter; JP Morgan Comment Letter; State Street Comment Letter; Western Asset Comment Letter; Invesco Comment Letter; Healthy Markets Association Comment Letter.

TABLE 12—PROBABILITY A PUBLICLY OFFERED INSTITUTIONAL PRIME FUND RUNS OUT OF LIQUIDITY UNDER THE BASELINE, PROPOSED THRESHOLD, BIGGEST REDEMPTIONS AND 4 ALTERNATIVE THRESHOLDS

Model	Starting liquidity		Probability that a fund depletes available liquidity on a given day					
	DLA (%)	WLA (%)	Day 1 (%)	Day 2 (%)	Day 3 (%)	Day 4 (%)	Day 5 (%)	At least one day (%)
Current Threshold	10	30	9.5	21.5	22.3	18.6	3.3	32.3
Proposed Threshold	25	50	2.4	1.8	4.8	4.8	1.2	8.5
Biggest Redemptions	25	55	2.4	1.4	3.6	3.6	0.0	6.5
Alternative 1	20	30	2.4	5.7	19.9	19.6	6.2	22.3
Alternative 2	20	40	2.4	3.1	12.0	10.6	2.5	15.4
Alternative 3	25	40	2.4	2.3	7.5	9.3	3.0	12.3
Alternative 4	25	45	2.4	1.8	5.7	6.5	2.5	10.4

Source: Form N–MFP and CraneData.

The above estimates rely on a number of modeling assumptions. First, institutional prime fund redemptions were historically higher than redemptions out of retail funds, which may bias the analysis to overestimate the probability a retail or private institutional prime fund runs out of liquidity on a given day. Second, the analysis assumes that assets maturing on a given business day will be available at the end of that day. Third, the analysis assumes no assets are sold into a distressed market and redemptions are absorbed fully out of a fund's liquid assets. Fourth, the models do not include government agency securities with a maturity in excess of seven days, and assume Treasury securities have daily liquidity regardless of maturity and can be sold without any loss. Fifth, the analysis assumes that funds would go below the current rule's 30% weekly liquid asset minimum, continuing to meet redemptions out of liquid assets, rather than hold on to the weekly liquid assets as occurred in March 2020. As discussed above, the removal of the potential imposition of redemption gates from rule 2a–7, and the removal of the current use of weekly liquid asset thresholds for redemption gates and liquidity fees in the rule, may increase the willingness of money market funds to meet redemptions with daily and weekly liquid assets. Sixth, these estimates are based on redemption patterns in March 2020 and the distribution of future redemptions may differ, in part, as a result of the proposed amendments.

In addition, this analysis does not capture the extent to which fund managers may be able to anticipate redemptions and pre-position fund liquidity ahead of time.[719] However, their ability to do so may be hampered in times of severe stress when redemption patterns are more volatile and less predictable, and costs of portfolio rebalancing are higher. Specifically, we have analyzed aggregate portfolios of institutional prime and retail prime funds during market stress in March 2020. As can be seen from Figure 14 and Figure 15 below, institutional prime funds increases their daily liquid assets the week after peak market stress (week of March 27), rather than during the week of peak market stress (week of March 20) when they experienced large net redemptions. By contrast, retail prime funds experienced less net redemptions and were able pre-position their portfolios during peak stress week by increasing their daily liquid assets.[720]

Figure 14—Aggregate Asset Changes of Institutional Prime Funds During 2020, by Liquidity Bins

[719] *See, e.g.,* Federated Hermes Comment Letter I. The commenter also indicated that the analysis relies on a false assumption that there are no inflows into the fund which could be utilized to offset redemptions. Since this analysis uses net rather than gross redemption patterns during March 2020, historical subscription activity is captured in the stressed fund paths analyzed here.

[720] In general, prime funds increased their liquidity after the Mar. 2020 market dislocation by purchasing Treasury securities from inflows, maturing assets or selling longer-dated assets. For instance, between Feb. 28, 2020 and Aug. 31, 2020, retail prime money market funds decreased their portfolio percentage of commercial paper and certificates of deposit from 64% to 38%, while the percentage of Treasury debt and repos increased from 14% to 34%. Similarly, institutional prime money market funds decreased their portfolio percentage of commercial paper and certificates of deposit from 50% to 38%, while the percentage of Treasury debt and repos increased from 18% to 33%.

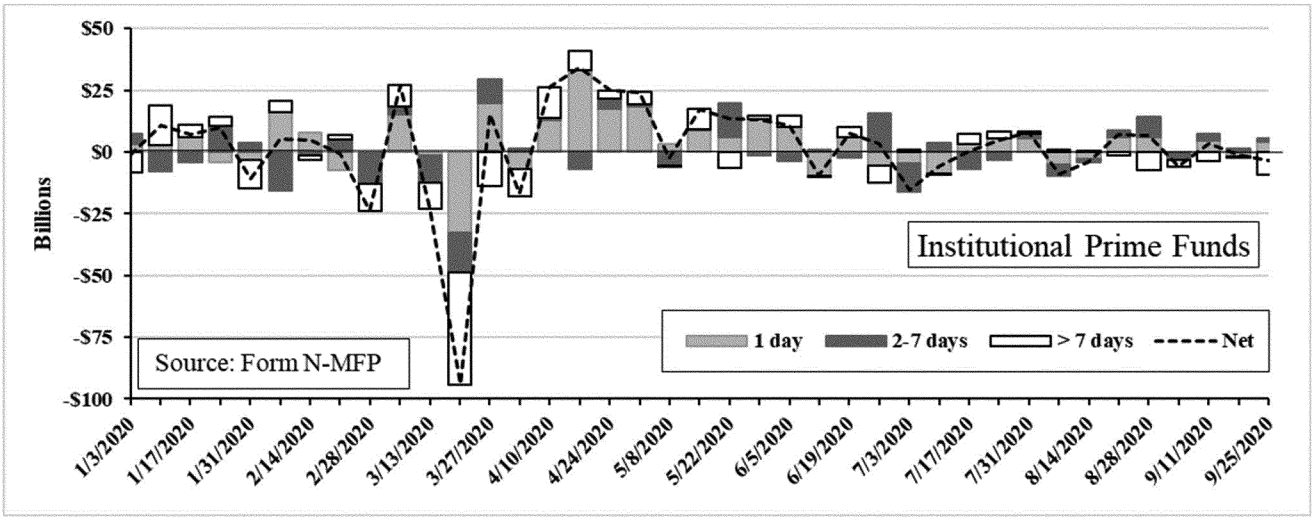
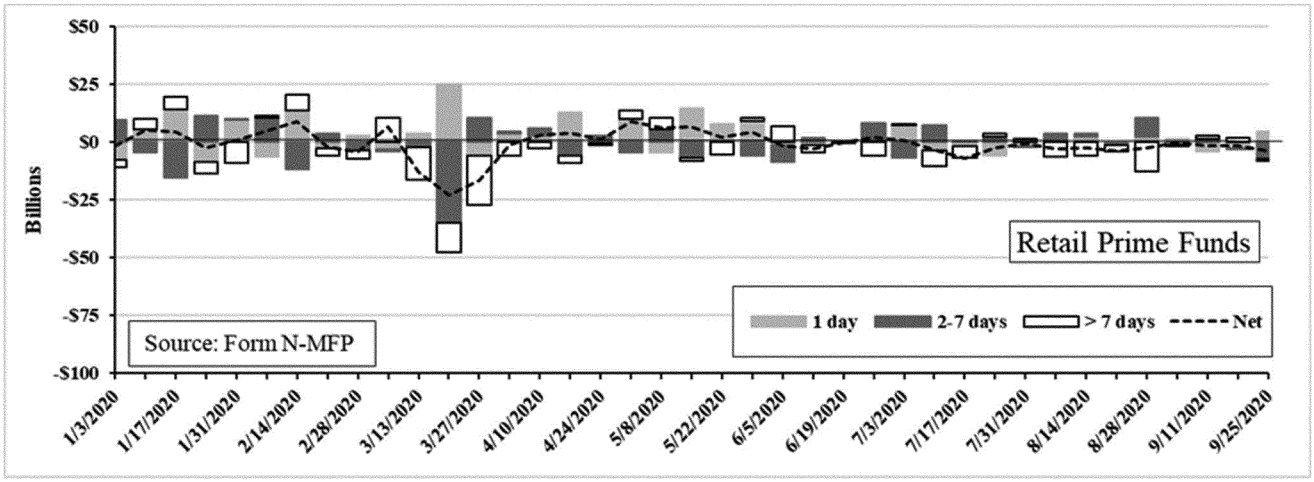


Figure 15—Aggregate Asset Changes of Retail Prime Funds During 2020, by Liquidity Bins



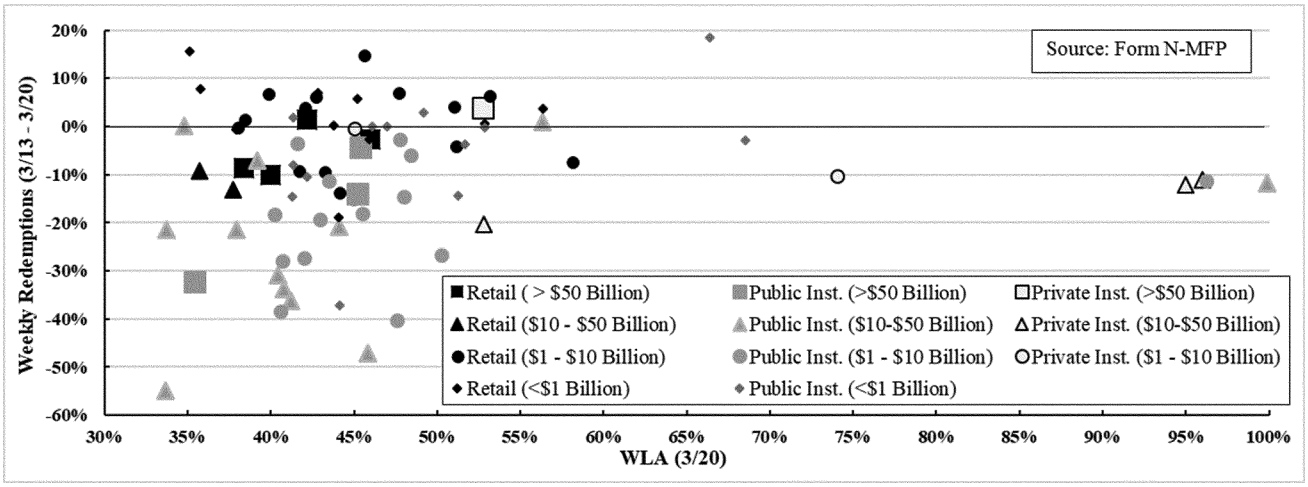
The Commission has received comments [721] that, under certain assumptions, a 20% daily and 40% weekly liquid asset threshold may be sufficient for funds to meet redemptions even if the stress lasts 10 weeks. One commenter's analysis in support of these thresholds assumed that funds face a redemption rate of 16% and that fund portfolios have somewhat frontloaded maturity laddering. In addition, the analysis did not take into account how heterogeneity in portfolio construction across funds may influence the levels of liquidity available to meet redemptions. Notably, during the stress of March 2020, funds exhibited a distribution of outflows with some funds experiencing outflows double or triple the average redemption rate; portfolios reported on Form N–MFP exhibited less frontloaded maturity structures than the commenter assumed; and heterogeneity in portfolio constructions mean that funds with longer dated securities would have less liquidity to meet redemptions. Additional analysis, described in greater detail below, aims to extend the commenter's modeling framework to take into account variations in redemption patterns and portfolio construction across funds.

Out of the sample of 42 prime money market funds, we removed four funds with weekly liquid assets below 35%, following the commenter's methodology to account for the possibility that redemptions out of those funds were exacerbated by the threat of gates and fees as weekly liquid asset levels approached 30%.[722] The average redemption rate for these four funds was approximately 28%, with the remaining 38 funds having an average redemption rate of 16%. Importantly, as can be seen from Figure 16, there were a number funds with weekly liquid assets in excess of 35% that had redemptions double and triple the 16% average.

Figure 16—Weekly Redemptions in Prime Money Market Funds During the Week of March 20, 2020

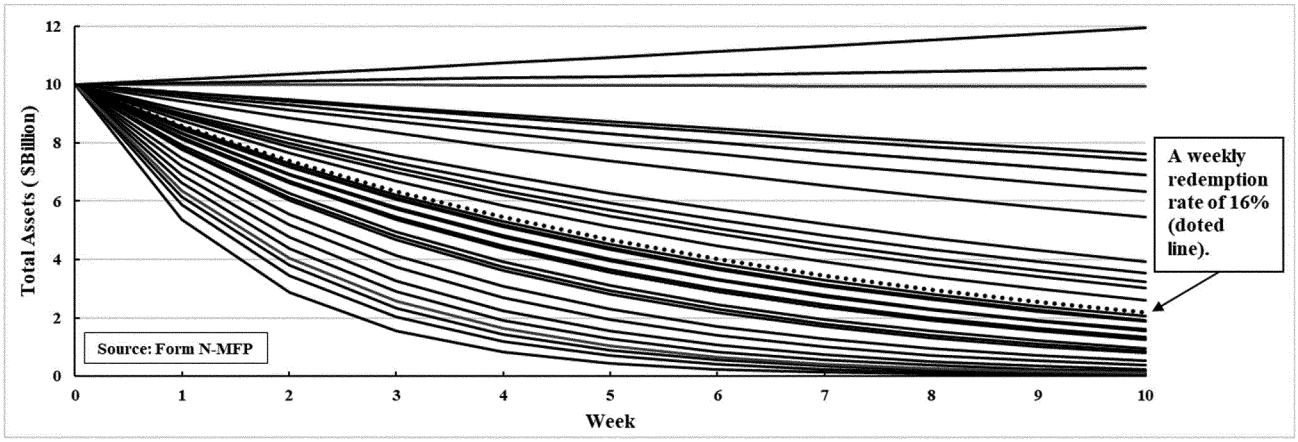
[721] *See, e.g.,* ICI Comment Letter.

[722] Additional models without removing the four funds with weekly liquid assets below 35% were constructed to compare with the commenter's results and to test the robustness of the models.



Next, we examined 1,744 public institutional prime fund portfolios that filed on Form N–MFP between October 2016 and February 2020 and placed every security in the 1,744 portfolios into maturity bins by week (from 1 week to >10 week maturity). Setting initial weekly liquid assets for each portfolio based on a given fund's weekly liquid assets provided on Form N–MFP and assuming no gates or fees, we then stressed each portfolio for 10 weeks using weekly redemption rates of 38 prime money market funds observed during the stress week. Similar to the commenter's analysis, we assumed that each portfolio started with $10 billion in total assets. Each week we calculated a new weekly liquid asset level for each portfolio based on the weekly liquid asset level the week before, the amount of assets that rolled over into the weekly liquid asset bin, and the weekly redemption rates. If the portfolio did not have enough weekly liquid assets to meet the weekly redemptions, then we assumed the longest dated assets were sold first with no haircuts. Under these assumptions, Figure 17 reports simulated changes in money market fund total assets after 10-weeks of redemptions. Figure 17 shows that, considering the entire distribution of redemption rates in March 2020 rather than the average redemption rate of 16%, a number of funds run out of assets well before the 10 week mark.

Figure 17—Simulated Changes in Prime Money Market Fund Total Assets Under 10 Weeks of Stress, Using Historical Distribution of Redemption Rates for the Week of March 20, 2020



To further quantify these effects, Table 13 shows the distribution of weekly liquid assets in fund portfolios with starting weekly liquid assets of 40% when stressed with up to 10 weeks of redemptions using 38 historical prime money market fund redemption rates in the stress week. As can be seen from Table 13, after one week of redemptions, 10% of fund portfolios with starting weekly liquid assets of 40% had less than or equal to 9% of weekly liquid assets remaining. By contrast, 10% of fund portfolios with starting weekly liquid assets of 50% had less than or equal to 28% of weekly liquid assets remaining. As another example, if fund portfolios enter the stress week with 40% in weekly liquid assets, a fifth have run out of weekly liquid assets to meet redemptions by week 2. At the same time, if fund portfolios enter the stress week with 50% in weekly liquid assets, a fifth of funds has 23% of weekly liquid assets remaining to meet redemptions.

TABLE 13—DISTRIBUTION OF WEEKLY LIQUID ASSETS (WLA) IN STRESSED PRIME MONEY MARKET FUND PORTFOLIOS AFTER 5 WEEKS OF STRESS, USING HISTORICAL DISTRIBUTION OF REDEMPTION RATES IN MARCH 20, 2020 AND PORTFOLIO COMPOSITION DATA FROM FORM N–MFP

Week	WLA start	Distribution of WLA											
		Min	5%	10%	20%	30%	40%	50%	60%	70%	80%	90%	Max
1	40%	0%	3	9	20	27	30	33	35	38	40	42	60%
2	40	0	0	0	0	13	19	25	31	37	42	45	66
3	40	0	0	0	0	0	6	16	25	36	42	47	79
4	40	0	0	0	0	0	0	8	23	37	45	51	100
5	40	0	0	0	0	0	0	1	19	37	46	54	100
1	50	6	22	28	38	42	44	47	50	52	54	59	69
2	50	0	0	0	23	32	38	44	49	53	58	67	84
3	50	0	0	0	6	20	31	41	50	55	61	73	90
4	50	0	0	0	0	11	26	41	52	58	66	80	100
5	50	0	0	0	0	3	21	39	53	60	68	84	100

Table 13 demonstrates two key results. First, when the historical distributions in prime money market fund redemption rates during the stress week in March 2020 and fund portfolio compositions are taken into account, a large share of stressed funds would run out of liquidity well before the 10 week mark suggested by some commenters. Second, funds that enter stress with 50% in weekly liquid assets have more weekly liquid assets to meet redemptions and are more likely survive a period of prolonged stress than funds that enter stress with 40% in weekly liquid assets.

Some commenters indicated that the proposed changes to the current fee and gate framework would allow funds to more freely use existing liquid assets to meet redemptions and, thus supported a more modest increase to the liquidity requirements.[723] The analysis presented above excludes from the distribution of historical redemption rates funds that entered the stress week with less than 35% of weekly liquid assets. Since those funds were more likely to approach the 30% weekly liquid asset threshold for the imposition of gates and fees, redemptions out of those funds were more likely to have been triggered by the risk of gating or fees. Thus, weekly liquid assets may remain crucial for the ability of money market funds to meet redemptions during times of stress even in the absence of gating.

More broadly, as can be seen from the above, lower liquidity thresholds relative to the final amendments would allow funds to hold less liquid assets, increasing fund liquidity risks. However, lower thresholds would decrease the number of money market funds having to restructure their portfolios; would reduce the incentives of funds to take larger risks in the less liquid portion of their portfolios; and would reduce the concentration of liquidity in repos that are used by leveraged market participants for funding liquidity.

Similarly, alternatives imposing higher minimum daily and weekly liquidity thresholds relative to the final amendments would require funds to hold more liquid assets, reducing the risk of fund liquidations or selloffs that may necessitate future government backstops. However, higher minimum liquidity thresholds would require a larger number of money market funds to reallocate their portfolios towards lower yielding investments. In addition, higher liquidity thresholds may lead funds to increase the risk in the remainder of their portfolios to attract investor flows or to keep fund yields from sliding below zero and ensure the viability of the asset class (the latter risk may be more pronounced in very low interest rate environments). Moreover, higher liquidity requirements may increase the availability of funding liquidity through repos to leveraged market participants, resulting in a higher levels of risk taking in less transparent and less regulated sectors of the financial system. The Commission continues to believe that the final liquidity thresholds balance these effects and are likely to allow more funds to have sufficient liquidity to meet redemptions during periods of liquidity stress.

b. Caps on Fund Holdings of Certain Assets

As an alternative to increasing the minimum daily and weekly liquid asset requirements, the Commission considered adopting caps on money market fund holdings of certain assets, such as commercial paper and certificates of deposit. Commercial paper and certificates of deposit lack an actively traded secondary market and are difficult to value or sell during times of liquidity stress. As discussed in the Proposing Release, limiting money market fund holdings of such instruments may reduce run risk to the degree that the illiquidity of all or a portion of a fund's portfolio may create externalities from redeeming investors borne by investors remaining in the fund, which may incentivize early redemptions.

However, this alternative relies on the assumption that commercial paper and certificates of deposit homogeneously reduce the liquidity of a fund's portfolio by more than other money market fund holdings across maturities. The Commission continues to recognize that these assumptions may not always hold for different money market funds and over different time horizons. Moreover, to the degree that investors prefer funds that deliver higher returns and money market funds benefit from investor expectations of implicit government backstops during times of liquidity stress, money market funds may react to this alternative by changing the maturity structure of their portfolios and reallocating into other securities with potentially higher liquidity risk. For example, money market funds may substitute short-term commercial paper and certificates of deposit that are classified as daily or weekly liquid assets with longer term commercial paper and certificates of deposit that would not be classified as daily or weekly liquid assets. Finally, because this alternative would involve defining the types of instruments subject to the cap, issuers may be able to create new financial instruments that are similar, and perhaps synthetically identical, to commercial paper and certificates of deposit along risk and return dimensions, but that would not be subject to the caps. The final approach, which would increase minimum daily and weekly liquid asset requirements, may reduce liquidity and run risk in money market funds without such

[723] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; Federated Hermes Comment Letter I; T. Rowe Price Comment Letter; Invesco Comment Letter.

potential drawbacks, while ensuring funds have minimum liquidity to meet large redemptions.

As another alternative, the final amendments could have replaced the minimum daily and weekly liquid asset thresholds with asset restrictions, such as imposing a minimum threshold for holdings of government securities [724] and repos backed by government securities. Under the baseline, such assets are generally categorized as daily liquid assets. Thus, such an approach would have the effect of replacing minimum daily and weekly liquid asset thresholds with a single daily liquid asset threshold, and restricting the types of assets that would qualify as daily liquid assets. This alternative would reduce the liquidity risk of liquid assets held by money market funds, which may help them meet redemptions without transaction costs. However, waves of redemptions as experienced in 2008 and 2020 occur over multiple days, suggesting that money market funds need to have both daily and weekly liquidity to meet redemptions. Moreover, asset restrictions imposing large minimum thresholds for holdings of government securities would decrease not only the risk, but also the yield of money market funds and their attractiveness to investors, reducing the viability of the asset class in low interest rate environments. This approach would also further concentrate money market fund holdings in specific types of assets, which may increase the likelihood of funds selling the same assets to meet redemptions in times of stress.

Finally, under the baseline, funds falling below minimum liquid asset thresholds may not acquire any assets other than daily or weekly liquid assets, respectively, until funds meet those minimum thresholds. The final amendments will retain this baseline approach, while increasing the absolute daily and weekly liquid asset thresholds. As an alternative, the final amendments could have imposed penalties on funds or fund sponsors upon dropping below the required minimum liquidity threshold. Similarly, the final amendments could have imposed a minimum liquidity maintenance requirement, which would require that a money market fund maintain the minimum daily liquid asset and weekly liquid asset thresholds at all times instead of the current requirement to maintain the minimums immediately after the acquisition of an asset. During the market stress in 2020, funds experiencing large redemptions were reluctant to draw down on weekly liquid assets due to the existence of the threshold for the potential imposition of redemption fees and gates. Such alternatives may have a similar effect of penalizing money market funds for using liquidity when liquidity is most scarce, which may make money market funds reluctant to use daily and weekly liquid assets to meet large redemptions during market stress. As a result, money market funds would be incentivized to sell less liquid assets, such as longer maturity commercial paper, into distressed markets, rather than risk penalties and dropping below minimum liquidity maintenance requirements. This may increase transaction costs borne by redeeming investors and may result in money market fund redemptions magnifying liquidity stress in underlying securities markets.

4. Alternative Stress Testing Requirements

As an alternative to the final amendments to stress testing requirements, the final amendments could have modified weekly liquid asset thresholds that funds must use for stress testing. For example, the final amendments could have required money market funds to perform stress testing using 15%, 20%, or 30% minimum weekly liquid asset thresholds. As another example, the final amendments could have required money market funds to use specific minimum daily and weekly liquid asset thresholds. Similarly, the Commission could have imposed explicit requirements regarding who would be responsible for determining the sufficient minimum level of liquidity for stress tests.[725] These alternatives may reduce the discretion of boards and fund managers in stress testing. The Commission continues to recognize that stress testing design and optimum levels of liquidity will vary depending on the type of money market fund, investor concentration, investor composition, and historical distribution of redemption activity under stress, among other factors. Thus, alternatives establishing bright line thresholds for stress testing or limiting the ability of fund boards to delegate stress testing responsibilities could reduce the efficiency of the stress testing process and the usability of stress testing results for board and Commission oversight.

The Commission also could have required stress testing results to be disclosed to investors.[726] This alternative could enable investors to better assess money market fund liquidity management and the vulnerability of various money market funds to liquidity stress. However, this alternative may also trigger self-fulfilling runs on more vulnerable money market funds, particularly in times of stress. Moreover, to the degree that funds anticipate the results of stress testing to become publicly disclosed, they may alter stress testing design, reducing its usability for board and Commission oversight.

5. Alternative Implementations of Liquidity Fees

a. Alternative Net Redemption Thresholds for Mandatory Liquidity Fees

As described in section II.B above, the final amendments will require institutional funds to apply liquidity fees when they experience large net redemptions. Specifically, if daily net redemptions exceed 5% of the fund's net assets, funds are required to assess liquidity fees that reflect the fund's good faith estimate of the costs the fund would incur if it sold a pro rata amount of each security in its portfolio to satisfy the amount of net redemptions, including spread costs, other transaction costs (*i.e.,* any other charges, fees, and taxes associated with portfolio security sales), and market impact costs the fund would incur if it were to sell a pro rata amount of each security in its portfolio to satisfy the amount of net redemptions (*i.e.,* vertical slice). If the fund is not able to make a good faith estimate supported by data of its liquidity costs based on the sale of a vertical slice (*e.g.,* if reliable transaction or quotation data for portfolio holdings are not available due to a freeze in short-term funding market activity), the fund would use a default liquidity fee of 1% of the value of share redeemed.

The final amendments could have used a different net redemption threshold for the application of mandatory liquidity fees. As shown in the Proposing Release, Table 14 demonstrates that 5% of institutional prime and institutional tax-exempt money market funds had outflows that exceeded 3.7%.

[724] *See, e.g.,* CCMR Comment Letter.

[725] *See, e.g.,* T. Rowe Comment Letter.

[726] *See, e.g.,* Systemic Risk Council Comment Letter.

TABLE 14—DAILY FLOWS OF INSTITUTIONAL MONEY MARKET FUNDS

Institutional funds	Average fund count	Percentiles						
		5%	10%	25%	50%	75%	90%	95%
Prime Only	37	−3.5	−1.9	−0.5	0.0	0.6	2.2	3.9
Prime + Tax-exempt	47	−3.7	−2.1	−0.5	0.0	0.6	2.3	4.1

Notes: This table reports the results of an analysis of daily flows reported in CraneData on 1,228 days between Dec. 2016 and Oct. 2021. As of Sept. 2021, CraneData covered 87% of the funds and 96% of total assets. Flows at the class level were aggregated to the fund level. Flows of feeder funds were aggregated for an approximation of flows for the corresponding master fund.

In the Proposing Release, the Commission proposed a swing pricing requirement, with a 4% net redemption threshold for market impact calculations, assessed on a pricing period rather than a daily basis. The Commission has received comment that the 4% threshold for applying a market impact factor was too low, particularly where the NAV is struck multiple times a day.[727] The final amendments could have required a lower net redemption threshold, such as 4%, or a higher threshold, such as 8% or 10% for the liquidity fee threshold. Alternatively, the final amendments could have used different redemption thresholds for the liquidity fee requirement for institutional prime and institutional tax-exempt funds. Section IV.C.4.b.i quantifies how alternative redemption thresholds would influence the scope of the liquidity fee framework and associated benefits and costs. For example, Table 7 shows the average percentage of funds per month that would exceed a certain net redemption threshold. For instance, on average, we would expect approximately 1.4% of institutional prime or institutional tax-exempt funds to exceed the 8% redemption threshold on any given day, while approximately 4.4% of institutional prime or institutional tax-exempt funds would exceed the 4% redemption threshold on any given day.

Higher (lower) net redemption thresholds for mandatory liquidity fees would reduce (increase) the number of days on which affected money market funds must estimate liquidity fees for portfolio securities, reducing (increasing) related costs and operational challenges. However, higher (lower) net redemption thresholds would also reduce (increase) the amount of dilution from redemptions that is recaptured by money market funds and accrue to non-transacting shareholders, especially in times of severe and/or prolonged stress. In addition, as discussed in section II.B.2.a, a higher redemption threshold for the imposition of liquidity fees may lead investors to expect that they will not incur a fee as long as they redeem early enough in a crisis, which may provide an incentive to redeem earlier in a redemption wave and contribute to the first-mover advantage. As discussed above, we believe that the final liquidity thresholds balance these effects and are likely to allow more funds to have sufficient liquidity to meet redemptions during periods of liquidity stress.

As another alternative, the final amendments could have required funds to set their own net redemption triggers on a fund-by-fund basis, with reference to each fund's historical flows.[728] For example, each fund could have been required to determine the trading days for which it had its highest flows over a set time period, and set its net redemption threshold based on the 5% of trading days with the highest redemptions.[729] Such alternatives could allow funds to customize their liquidity fee thresholds to their historical redemption flows. However, they may also result in under-application of fees by funds with higher run risk and over-application of fees by funds with lower run risk. For example, funds with volatile redemption histories and high investor concentration could avoid the application of liquidity fees in times of stress if they have had large historical redemptions, whereas funds with smooth redemption histories and low investor concentration would have to apply fees even in the face of low redemptions in absolute terms. In addition, these alternatives may reduce the comparability of money market fund returns for investors because liquidity fees, including the associated market impact calculations, influence reported fund returns. Finally, such alternatives may create strategic incentives for fund complexes to open and close funds depending on historical redemption activity. For example, to the degree that the estimation of liquidity fees may be burdensome or to the extent that there may be incentives from fund flows not to apply liquidity fees, fund families may choose to close funds that experienced high redemptions to avoid the application of liquidity fees.

b. Alternative Allowing the Exclusion of Pre-Announced Redemptions From the Net Redemption Threshold for Mandatory Liquidity Fees

Under the final amendments, all institutional prime and institutional tax-exempt money market funds will be required to apply liquidity fees during days with net redemptions in excess of 5% of fund net assets, unless the estimated liquidity fee is below 1 basis point. In addition to the final rule's de minimis exception, the final rule could have allowed funds to exclude from the 5% net redemption threshold redemption requests that were pre-announced by investors to a fund a reasonable period in advance. To the degree that fund managers are able to pre-position their portfolio liquidity to meet anticipated large redemptions, this alternative could result in fewer instances in which funds would be required to estimate liquidity fees when liquidity costs are de minimis. Moreover, this alternative would incentivize investors to pre-announce their large redemption requests to fund managers in order to reduce the possibility of a liquidity fee, and these pre-announced redemption requests may enhance efficiency of liquidity management by money market funds. At this time, we believe that the final rule may result in similar benefits because, under normal market conditions, the liquidity costs of a fund with pre-positioned liquidity meeting anticipated redemptions generally would be de minimis. However, unlike the alternative, if a fund is not able to pre-position its daily or weekly liquidity in anticipation of pre-announced

[727] *See, e.g.,* IIF Comment Letter; Bancorp Comment Letter.

[728] As another possibility, the final amendments could have allowed funds discretion over which historical period could be chosen. However, because money market funds may not internalize the externalities that their liquidity management imposes on investors in the same asset class, they may not be incentivized to use such discretion in a way that mitigates those externalities. For example, some affected funds may choose a historical time period that results in liquidity fee thresholds that are too high, so that liquidity fees are rarely applied. Moreover, because liquidity fees would influence reported returns, the alternative may reduce the comparability of money market fund returns for investors.

[729] As another alternative, the rule could have required policies and procedures regarding the choice of a threshold percent level based on historical data.

redemptions and liquidity costs are above de minimis (for example, in stressed market conditions), pre-announced redemptions could still dilute non-transacting investors, and funds would be required to charge a liquidity fee to redeemers under the final rule.

The final rule could have allowed funds to exclude from the 5% net redemption threshold redemption requests that were pre-announced by investors to funds a reasonable period in advance instead of the final rule's de minimis exception. At this time, we believe that such an alternative may be more costly to funds and investors than the de minimis exception in the final rule, as an exception for pre-announced redemptions could increase uncertainty about when the exception applies (*e.g.,* what period of time before the day of redemption is reasonable and provides sufficient time for the fund to pre-position itself) and may incentivize investors to pre-announce redemptions that they may not ultimately carry through, which would create inefficiencies in the fund's liquidity management. Moreover, the final rule's de minimis exception may be more efficient than the pre-announced redemption exception because money market fund investors may face unexpected cash needs and may be unable to pre-announce their large redemptions.

c. Greater Discretion in the Liquidity Fee Framework

Under the final amendments, all institutional prime and institutional tax-exempt money market funds would be required to apply liquidity fees during days with net redemptions in excess of 5% of fund net assets. The Commission has considered several alternatives that would give funds greater discretion over both the triggers for liquidity fees, liquidity fee amounts, and potential caps. For example, the rule could require funds to adopt specific procedures regarding the potential imposition of liquidity fees.[730] Similarly, the final rule could have left the application and calculation of liquidity fees to fund discretion, while requiring fund boards to consider certain specified factors when determining whether to implement a liquidity fee.[731] As a related alternative, the final rule could have provided institutional fund boards broad discretion to impose liquidity fees when in the best interest of the fund and its investors.[732] As another alternative, the final rule could have made the application of liquidity fees optional.

These alternatives may allow institutional funds not to implement liquidity fees or to implement a liquidity fee framework with higher liquidity fee thresholds and lower liquidity fee amounts (for example, without estimating market impacts of a hypothetical sale of the vertical slice). Relative to the final amendments, these alternatives may allow funds to better tailor their liquidity management and liquidity fee design to investor composition, portfolio and asset characteristics, and prevailing market conditions. This alternative may also avoid operational costs and challenges of liquidity fees for some funds. To the degree that the implementation of mandatory liquidity fees under the final rule may result in higher fees charged to redeemers, which can reduce the attractiveness of affected funds to investors, these alternatives may decrease potential adverse impacts of liquidity fees on the size of the institutional money market fund sector, the number of institutional money market funds available to investors, and the availability of wholesale funding liquidity in the financial system. However, these alternatives would decrease comparability of fund returns and benefits of the liquidity fee framework.

The operational costs of implementing liquidity fees are immediate and certain, while the benefits are largest in relatively rare times of liquidity stress. Moreover, affected funds may not internalize the externalities that they impose on investors in the same asset classes or the externalities that redeeming investors impose on investors remaining in the fund. While money market funds may have governance structures in place and reputational incentives to manage liquidity to meet redemptions—and fund sponsors may have chosen to provide sponsor support in the past—institutional money market funds also face disincentives from investor behavior and collective action problems. Specifically, to the degree that institutional investors may use institutional prime and institutional tax-exempt funds for cash management and may be sensitive to liquidity fees, funds that start charging liquidity fees on large redemptions when other funds are not may experience follow-on redemption waves. As a result, institutional money market funds may be reluctant to be the first to start charging liquidity fees, even if all such funds recognize the value of charging redeeming investors for the liquidity costs of redemptions.

Thus, these alternatives could reduce the likelihood that funds use liquidity fees as an anti-dilution tool. This may reduce or eliminate important benefits of the final liquidity fee requirement, including protecting non-transacting investors from dilution, reducing first-mover advantage and run risk, and reducing liquidity externalities money market funds may impose on market participants transacting in the same asset classes. In addition, relative to the final amendments, these alternatives would increase fund manager discretion over the choice of liquidity fee thresholds, size of liquidity fees, and the application of liquidity fees in general, which may reduce the comparability of money market fund returns for investors. Finally, in the absence of a prescribed trigger for liquidity fees, fund boards may default to relying on weekly liquid asset thresholds to trigger liquidity fees.[733] As discussed in section IV.C.1 above, weekly liquid asset thresholds may magnify, rather than dampen, liquidity externalities in money market funds, the first-mover advantage in investor redemptions, and run risk in money market funds.

Importantly, as discussed in section IV.C.4.b, the final rule would allow institutional money market funds to impose discretionary liquidity fees on days with net redemptions at or below 5% of the fund's net assets. A combination of mandatory liquidity fees on days with large net redemptions and discretionary liquidity fees on days with smaller net redemptions may reduce dilution cost, run risk, and fund resilience when faced with large redemption waves and during times of stress, while providing funds with greater flexibility in routine liquidity management.

As a related alternative, the final amendments could have required institutional funds to apply liquidity fees as in the final rule, but without a requirement to estimate market impact factors. Alternatively, the final amendments could have made the use of market impact factors in liquidity fee calculations less prescriptive and more principles-based or optional in their entirety. These alternatives would reduce the likelihood and frequency with which affected money market

[730] *See, e.g.,* Federated Hermes Comment Letter I; ICI Comment Letter; Americans for Tax Reform Comment Letter; CFA Comment Letter.

[731] *See, e.g.,* ICI Comment Letter.

[732] *See* ICI Comment Letter; Schwab Comment Letter; Federated Hermes Comment Letter I; Federated Hermes Comment Letter II; Federated Hermes Board Comment Letter; Invesco Comment Letter; SIFMA AMG Comment Letter; Americans for Tax Reform Comment Letter.

[733] *See, e.g.,* Allspring Funds Comment Letter.

funds would estimate market impacts in their liquidity fee calculations, which may reduce costs and operational challenges of doing so. However, this may reduce the frequency and size of liquidity fees and the benefits of liquidity fees for non-transacting shareholders.

Increased discretion in liquidity fee calculations may allow funds to tailor the calculation of liquidity costs to individual portfolio and asset characteristics and prevailing market conditions. This may make liquidity fees a more precise measure of liquidity costs assessed to redeeming investors. However, because liquidity fees influence reported fund returns, greater discretion over the calculation of liquidity fees may reduce the comparability of money market fund returns for investors. Moreover, because money market funds may not internalize the externalities that their liquidity management practices may impose on investors in the same asset class, they may not be incentivized to use such discretion in a way that mitigates those externalities. Specifically, funds may compete on liquidity fees and may face flow incentives to impose lower fees, and this alternative may result in assessed liquidity fees being too low to recapture the dilution costs of redemptions.

d. Other Liquidity Fee Thresholds, Tiered Liquidity Fees, and Alternative Default Fees

The Commission has considered a variety of alternatives to the final liquidity fee framework. For example, given baseline delays in order flows across various fund intermediary networks, the final rule could have required affected money market funds to impose liquidity fees conditional on a previous day's net redemptions exceeding 5% or some other threshold from the previous day. This alternative could improve precision of the threshold determination by allowing funds to use more complete flow information. However, this alternative may involve three significant groups of costs. First, redeeming investors would be able to more accurately predict whether a liquidity fee would be assessed on a particular trading day and the following day.[734] This may trigger redemptions on days in which fees would not be applied, magnifying the first-mover advantage in money market fund redemptions and reducing resilience of affected money market funds under stress. Second, days with large net redemptions may be followed by days with smaller net redemptions, especially outside of redemption waves. The alternative imposing a fee on next day's redemptions based on previous day's flows may capture less dilution costs compared to the final rule. Third, under this alternative, redeemers on a given day would be charged a liquidity fee based on the transaction activity of redeemers on a previous day, which can pose fairness concerns.

The final rule could have triggered fees based on a fund's sale of portfolio securities, instead of the level of net redemptions, and could have tied the size of the fee to ex post transaction costs and market impacts of security sales. In the swing pricing context, one commenter indicated that security sales are a better barometer of dilution than net redemptions.[735] To the degree that most affected money market funds may meet redemptions out of daily or maturing weekly liquid assets, this approach could result in a less frequent imposition of liquidity fees. However, the final rule will allow funds to assume that the market impact of weekly liquid assets of zero and includes a de minimis exception for liquidity fees. Thus, under the final rule, most funds are also unlikely to assess liquidity fees under normal market conditions. To the degree that this alternative results in less frequent imposition of liquidity fees, especially in times of stress, it could involve lower costs of implementing the liquidity fee approach for affected money market funds—costs that are likely to be passed along to money market fund investors. Moreover, the size of the fee under this alternative would be derived from transaction data of each fund, which may increase the degree of precision in estimates of spread and market impact costs of redemptions.

However, this alternative may have significant costs relative to the final rule. Specifically, the alternative may reduce the amount of dilution costs affected money market funds recapture for the benefit of non-transacting shareholders relative to the final approach. If a fund is forced to sell portfolio securities during market stress, they are likely to sell less illiquid portfolio holdings first. A fee based only on the transaction costs and market impacts of the securities actually sold by a fund to meet redemptions would undercharge redeemers for the liquidity costs they impose on the remaining investors. Thus, relative to the final rule's requirement to estimate fees on the assumption of the sale of the pro-rata slice of portfolio securities, the alternative would reduce the benefits of the liquidity fee framework for the protection of non-transacting investors and run incentives in affected money market funds. Moreover, under stressed conditions, short-term funding markets may freeze and money market funds may be unable to sell portfolio securities, so the alternative may result in low or zero liquidity fees being assessed precisely when dilution costs are greatest. The final amendments may result in larger and more frequent liquidity fees being assessed, less dilution of non-transacting investors, and overall lower run risk in affected money market funds.

The final rule could have relied on alternative bright line approaches, whereby liquidity fees would trigger automatically upon certain events. For example, the final rule could have tied the trigger of mandatory liquidity fees to a specific net redemption level or weekly liquid assets threshold. As a related alternative, the liquidity fee framework could have included dual triggers based on net redemptions and liquidity levels, with both triggers being required for the imposition of a liquidity fee.[736] For example, the rule could have triggered liquidity fees based on net redemptions of more than 10% and drops in liquidity of more than 50% below required weekly liquid asset levels, which could be indicative of potential stress. As another alternative, liquidity fees could be triggered, at least in part, based on a specified amount of net redemptions over multiple days.[737] For example, funds could be required to charge a 2% liquidity fee when they experience net redemptions of 15% over the course of two consecutive trading days. As another example, a fee could be triggered in the event of 5% net redemptions over three consecutive days, in addition to an occurrence of a Form N–CR reportable event. These alternatives may improve the ability of investors to forecast whether a liquidity fee would be imposed across time and may reduce the incidence with which funds would be required to impose liquidity fees relative to the final rule. The final rule's same-day net redemption trigger may be less forecastable and less susceptible to

[734] *See* 17 CFR 270.2a–7(h)(10)(ii)(C) (requiring a money market fund to update its website each business day to provide its net inflows or outflows as of the end of the preceding business day).

[735] *See, e.g.,* Capital Group Comment Letter.

[736] *See, e.g.,* ICI Comment Letter; IIF Comment Letter; BlackRock Comment Letter; JP Morgan Comment Letter; Invesco Comment Letter; SIFMA AMG Comment Letter.

[737] *See, e.g.,* Morgan Stanley Comment Letter; State Street Comment Letter.

strategic redemptions and run risk relative to these alternatives.

The Commission also received comments recommending tying the application of liquidity fees to stress as indicated, for example, by weekly liquid assets instead of net redemptions.[738] While significant declines in a fund's weekly liquid assets can reflect fund-specific liquidity stress and contribute to dilution of non-transacting shareholders, the weekly liquid asset threshold is more susceptible to strategic redemptions, as discussed in section IV.C.4 above. We believe that the final rule would result in larger liquidity fees under stressed conditions while reducing incentives for strategic redemptions incentives in three ways. First, the final rule would require that funds calculate market impacts based on the costs of selling the pro-rata slice of the fund portfolio, which would be higher under stress, as discussed in greater detail below. Second, where liquidity costs are below one basis point of the value of the shares redeemed, such as under normal conditions and outside of stress, funds would not be required to assess liquidity fees. Third, if markets are so stressed that transactions are scarce and funds are unable to estimate the costs of selling the pro-rata slice of the fund portfolio, funds would apply a default liquidity fee of 1%.

As another alternative, the Commission could have tiered liquidity fees depending on net redemptions and/or liquid asset thresholds. For example, some commenters suggested that affected funds could be required to charge liquidity fees of: (1) 0.25% if net redemptions are 10% or more and weekly liquid assets are less than 30% but at least 20%; (2) 1% if weekly liquid assets are less than 20% but at least 10%; and (3) 2% if weekly liquid asset are less than 10%.[739] Other commenters suggested tiered liquidity fees based solely on declines in liquidity.[740] For example, the final rule could have imposed a tiered fee structure for mandatory liquidity fees that would range from 0.5%, 1%, or 2% depending on whether weekly liquid assets were 20%–30%, 10%–20%, or less than 10%, respectively. These determinations could rely on the prior day's weekly liquid assets or on weekly liquid assets as of the end-of-day NAV calculation for these determinations.

Relative to the final rule, these alternatives may reduce costs of implementing the liquidity fee framework by eliminating costs of estimating spread and other transaction costs of net redemptions, as well as market impacts of a hypothetical sale of the vertical slice. Moreover, alternatives that would impose tiered liquidity fees based on daily or weekly liquid assets (without consideration of net redemptions) would eliminate costs of reviewing same-day net redemptions. Thus, these alternatives would require funds to impose higher fees in the face of declining liquidity and larger redemptions, which may proxy for larger liquidity costs of redemptions.

As discussed above, we believe that weekly liquid asset thresholds may be subject to greater run risk than a net redemption threshold. Moreover, by having solely fixed liquidity fee levels, these alternatives may over- or under-charge redeemers for the liquidity costs of their redemptions. In contrast, the final rule will generally require each fund to make a good faith estimate of the liquidity costs of meeting each day's worth of net redemptions under a given set of market conditions on that day. This may increase the accuracy with which liquidity fees price dilution costs, protecting non-transacting investors from dilution without over-charging redeemers. Importantly, under the final rule, the liquidity fee will be lower when a fund's weekly liquid assets are higher because the rule will allow funds to assume that weekly liquid assets have a market impact of zero, resulting in similar economic benefits of tiering.

Finally, the final rule could have included different default liquidity fees that funds would be able to charge if they are unable to produce good faith estimates of the liquidity costs of redemptions. For example, the Commission could have scaled the default liquidity fee of 1% in the final rule to a fund's liquid asset levels (for example, by multiplying it by one minus the level of weekly liquid assets, or by one minus the level of daily liquid assets, at the end of the same or previous day). Such alternatives to the default fee may more closely resemble the costs of a hypothetical sale of the vertical slice, as funds with higher liquid assets would charge lower default fees in times of stress, when they are better able to absorb redemptions out of liquid assets with a zero haircut. However, this approach could reduce the fee that funds charge redeemers in times of stress and, given that fund liquidity levels are publicly disclosed, could contribute to incentives to redeem before a fund's liquidity is depleted. Moreover, this alternative may create an incentive for funds to hold onto weekly liquid assets in times of stress, when the costs of the vertical slice are difficult to estimate and funds are most likely to use the default fee. The final rule's 1% default fee is consistent with the current baseline and is a significant fee for money market funds that are used as cash vehicles. Moreover, the default fee is intended to apply precisely when accurate data on liquidity costs for portfolio securities is not available and does not replace individual fund estimates of market impacts of a hypothetical sale of the vertical slice. Importantly, funds may have incentives to use default fees only in historically rare periods of stress, when transaction and quotation activity in short-term funding markets freezes and data needed to estimate liquidity costs of redemptions are not available.

e. Other Alternative Implementations of Liquidity Fees

The final amendments could have required institutional funds to assess a liquidity fee on all days with net redemptions, rather than only on days when net redemptions exceed 5%. Alternatives requiring funds to apply liquidity fees when net redemptions are below the 5% threshold may enhance the expected economic benefits of liquidity fees. However, these alternatives would impose greater costs on institutional funds related to calculating spread, transaction, and market impacts when net redemptions are low. As discussed in the baseline, money market funds generally hold high levels of daily and weekly liquid assets, and the final amendments would require money market funds to hold even higher levels of these assets. As a result, unless both net redemptions and price uncertainty are large, institutional funds may be able to absorb redemptions of transacting investors without imposing large liquidity costs on the remaining investors.

The final amendments could have allowed funds to calculate the liquidity fees under the assumption that the fund would absorb redemptions out of liquid assets (the so-called horizontal slice of the fund portfolio) or otherwise provide funds with flexibility to determine the costs based on how they would satisfy redemptions on a given day. Money market funds may manage their liquidity so as to be able to absorb redemptions out of daily and weekly liquid assets, rather than having to sell a pro-rata share of their portfolio holdings. Moreover, the final amendments would require money market funds to hold higher levels of

[738] *See, e.g.,* ICI Comment Letter.

[739] *See, e.g.,* BlackRock Comment Letter; JP Morgan Comment Letter.

[740] *See, e.g.,* ICI Comment Letter; Western Asset Comment Letter.

daily and weekly liquid assets. Assets that are not daily and weekly liquid assets can be less liquid and generally may need to be held to maturity by the fund. Thus, the alternative would allow funds to avoid charging liquidity fees if they are able to, for example, absorb redemptions out of more liquid assets. This may reduce uncertainty for investors about the magnitude of the potential liquidity fee, especially when liquidity is not scarce. However, this alternative would result in redeeming investors not being charged for the true liquidity costs of redemptions, which consist not only of the immediate costs of liquidating fund assets, but also of the cost of leaving the fund more depleted of liquidity and thus more vulnerable to future redemptions.

As another alternative, the final amendments could have required that affected money market funds calculate the liquidity fee based on the fund's best estimate of the liquidity costs of redemptions, rather than following the approach prescribed in the final rule. Under this alternative, liquidity fees may more accurately capture the costs of redemptions as funds would be able to tailor fees to their liquidity management strategies (whether that is, for example, liquidating pro-rata shares of portfolio holdings, absorbing redemptions out of daily or weekly liquidity, or some other approach). However, this alternative would increase fund discretion in the calculation of liquidity fees, reduce comparability of fees across money market funds, and fund manager incentives may not be aligned with incentives to accurately estimate liquidity costs of redemptions. For example, larger liquidity fees benefit the fund and can improve reported fund performance. At the same time, disclosures about historical fees can incentivize fund managers to apply excessively low fees to attract investors.

6. Swing Pricing

In lieu of the final liquidity fee framework, the Commission could have adopted the swing pricing requirement similar to the mandatory liquidity fee framework, or as proposed. The swing pricing alternative has several important differences from the final liquidity fee framework, and these differences give rise to different economic benefits, costs, and operational challenges. As discussed in the Proposing Release and in section II, swing pricing and liquidity fees can both charge redeeming investors for the liquidity costs they impose on a fund and allow funds to recapture the liquidity costs of redemptions for non-redeeming investors. However, the swing pricing alternative may have several effects relative to the final liquidity fee framework.

First, the final liquidity fee framework may be more transparent than a swing factor adjustment to the fund's NAV, as redeeming investors would more clearly see application of a separate fee. Some commenters stated that a liquidity fee would be less confusing and more transparent with respect to the liquidity costs redeeming investors incur because investors are more familiar with the concept of liquidity fees (that exist in the current rule) and because the size of the swing factor is not readily observable in the fund's share price.[741]

Second, under the swing pricing alternative, subscribers enter at a lower price. This creates an incentive to subscribe that may be important when liquidity is scarce and a fund is facing a wave of redemptions. However, some commenters indicated that a liquidity fee would be a more direct way to pass along liquidity costs and, unlike swing pricing, would do so without providing a discount to subscribing investors or adding volatility to the fund's NAV.[742]

Third, there may be significant operational challenges and time pressures of swing pricing[743] that reduce investor access to same day liquidity.[744] Specifically, commenters expressed concern that swing pricing may inhibit a fund's ability to offer features such as same-day settlement and multiple NAV strikes per day due to concerns that swing pricing would delay a fund's ability to determine its NAV.[745] Under the swing pricing alternative, a fund has to analyze flows and costs before publishing its NAV for each pricing period. In contrast, under the final liquidity fee framework, funds may have more time after publishing the NAV to finalize the liquidity fee determination and only need to perform the analysis once per day. One commenter indicated that a liquidity fee framework could better preserve same-day liquidity for investors than swing pricing because liquidity fees are already operationally feasible for many money market funds and present fewer implementation challenges.[746] Because institutional money market funds typically offer same-day settlement, the final liquidity fee framework would also involve time pressures, albeit less acute.

Fourth, some commenters argued that swing pricing is ill-suited for money market funds given the general lack of experience with swing pricing in the money market fund industry,[747] and indicated that liquidity fees would be easier for money market funds to implement, allowing funds to leverage their existing experience with liquidity fees under current rules.[748]

Fifth, the Proposing Release recognized that swing pricing may increase costs of tax reporting. Specifically, the swing pricing alternative may increase tax reporting burdens for investors if the requirement prevents an investor from using the NAV method of accounting for gain or loss on shares in a floating NAV money market fund or affects the availability of the exemption from the wash sale rules for redemptions of shares in these funds. Several commenters stated that swing pricing would increase tax reporting burdens because wash sale rules may apply to redemptions in floating NAV money market funds using swing pricing.[749] In contrast, the tax implications of liquidity fees are already settled. In addition, liquidity fees have fewer accounting implications for funds because other types of mutual funds have used fees and money market funds are already subject to a liquidity fee framework.[750]

As discussed in section II, many commenters expressed broad concerns about the swing pricing proposal and its potential effect on institutional money market funds and investors. One commenter indicated that the swing pricing requirement is based on false assumptions, including the assumption that liquidity fees did not work during market stress of 2020, that fund boards will not implement liquidity fees, and

[741] *See, e.g.,* Morgan Stanley Comment Letter; SIFMA AMG Comment Letter; Federated Hermes Comment Letter II.

[742] *See, e.g.,* ICI Comment Letter; Federated Hermes Comment Letter II; JP Morgan Comment Letter.

[743] *See, e.g.,* ICI Comment Letter; Northern Trust, Capital Group Comment Letter; JP Morgan Comment Letter.

[744] *See, e.g.,* Northern Trust Comment Letter; BlackRock Comment Letter.

[745] *See, e.g.,* Capital Group Comment Letter; State Street Comment Letter; ICI Comment Letter; Federated Hermes Comment Letter II; SIFMA AMG Comment Letter; BNY Mellon Comment Letter.

[746] *See* IIF Comment Letter.

[747] *See* Morgan Stanley Comment Letter; SIFMA AMG Comment Letter; IIF Comment Letter; Federated Hermes Comment Letter I; Federated Hermes Comment Letter II; Senator Toomey Comment Letter; Mutual Fund Directors Forum Comment Letter; *see also* Profs. Ceccheti and Schoenholtz Comment Letter.

[748] *See, e.g.,* Federated Hermes Comment Letter II; Invesco Comment Letter; SIFMA AMG Comment Letter; Schwab Comment Letter; IIF Comment Letter.

[749] *See, e.g.,* Northern Trust Comment Letter; Capital Group Comment Letter; ICI Comment Letter; SIFMA AMG Comment Letter; Federated Hermes Comment Letter II; Americans for Tax Reform Comment Letter.

[750] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter.

that swing pricing will not eliminate a key tenet of money market funds (availability of intraday and same day liquidity), among others.[751] Moreover, the commenter stated that empirical studies about the effects of swing pricing on redemptions in a crisis cited in the proposal do not support the swing pricing requirement.[752] While we disagree with this assertion, we are not adopting the swing pricing requirement for money market funds. Section II, section IV.4, and the above discussion highlight the effects of the liquidity fees tied to weekly liquid assets in March 2020 on redemption behavior, fund flow disincentives to implement liquidity fees, and the potential effects of swing pricing on the availability of same-day and intraday liquidity, among other things. In light of this analysis and commenter input,[753] we believe that, on balance, the final liquidity fee framework may be a more operationally feasible and efficient way to reduce dilution of fund investors and facilitate liquidity risk management by money market funds while reducing costs and unintended effects on the money market fund industry and investors.

7. Expanding the Scope of the Floating NAV Requirements

The final amendments could have expanded the floating NAV requirements to a broader scope of money market funds. For example, the final amendments could have imposed floating NAV requirements on all prime money market funds, but not on tax-exempt funds. As another alternative, the final amendments could have imposed floating NAV requirements on all prime and tax-exempt money market funds.[754] Finally, the final amendments could have required that all money market funds float their NAVs.[755]

Expanding the scope of the floating NAV requirements beyond institutional prime and institutional tax-exempt funds would involve several benefits. First, a floating NAV may increase transparency about the risk of money market fund investments. Portfolios of money market funds give rise to liquidity, interest rate, and credit risks—risks that are relatively low under normal market conditions, but may be magnified during market stress. To the degree that investors in stable NAV funds are currently treating them as if they were holding U.S. dollars due to a lack of transparency about risks of such funds, expanding the scope of the floating NAV requirements may enhance investor protections and enable investors to make more informed investment decisions. Some commenters indicated that such an alternative could clarify to investors that there is investment risk in these products and that money market funds differ from insured bank deposits, as well as reduce the likelihood that official sector interventions and taxpayer support will be needed to halt future runs.[756]

Second, these alternatives could reduce run risk in affected stable NAV funds.[757] Specifically, floating the NAV may reduce the first-mover advantage in redemptions, partly mitigating investor incentives to run. A floating NAV requirement could discourage herd redemption behavior across all prime money market funds and may reduce the advantages of sophisticated investors that redeem quickly under stressed conditions. Third, floating the NAV of a broader range of money market funds could more accurately capture their role in asset transformation and corresponding risks. Retail prime and retail tax-exempt funds have risky portfolio holdings, with some of the underlying holdings of retail money market funds similar to those of institutional prime funds, which experienced significant stress in 2020. Expanding the floating NAV requirements to all money market funds would result in a consistent regulatory treatment of money market funds and put them on par with other mutual funds. Moreover, it may enhance the allocative efficiency in the money market fund industry and may enhance competition between floating NAV and stable NAV funds. To the degree that the disparate treatment of floating NAV and stable NAV funds led to a significant migration of institutional investments from prime and tax-exempt money market funds to government money market funds, alternatives expanding the scope of the floating NAV requirement to all money market funds may lead to outflows from government money market funds back into prime and tax-exempt sectors.

However, retail investors have exhibited a lower propensity to run in prior market stress periods than institutional investors. Additionally, government funds tend to receive inflows rather than outflows during periods of market stress. These factors would reduce the benefits of a floating NAV in terms of reducing run risk for retail and government funds. Further, the final rule's increase in liquidity requirements may decrease the portfolio and redemption risks of retail funds, as the final rule will require these funds to maintain liquidity levels that are high in comparison to historical redemptions these funds have experienced, further reducing the benefits of a floating NAV requirement.

At the same time, the alternatives would impose significant costs. First, such alternatives may reduce the attractiveness of affected money market funds to investors and may result in significant reductions in the size of the money market fund sector. One commenter noted that adopting a floating NAV for all funds may cause investors to reallocate capital into cash accounts subject to deposit insurance, with adverse effects on wholesale funding liquidity and access to capital for issuers.[758] To the extent that retail investors use money market funds as a safe, cash-like product, floating the NAV of stable NAV funds may lead investors to reallocate capital into cash accounts subject to deposit insurance. This would reduce retail investors' ability to receive market rates for their cash management investments.

Second, the Commission continues to recognize that if the floating NAV alternatives resulted in a decrease in the size of the money market fund industry, they would adversely impact the availability of wholesale funding liquidity and access to capital for issuers. A reduction of wholesale funding liquidity available to arbitrageurs may magnify mispricing across securities markets. Similarly, a reduction in the size of affected money market funds or the money market fund industry as a whole may increase the costs of or decrease access to capital for issuers in short-term funding markets.

Third, the floating NAV alternative may involve significant operational, accounting, and tax challenges. In particular, alternatives involving switching retail funds from stable NAV to floating NAV may create accounting and tax complexities for some retail investors. For instance, some retail

[751] *See* Federated Hermes Comment Letter I.

[752] *See* Federated Hermes Comment Letter I discussing, for example, Dunhong Jin, et al., *Swing Pricing and Fragility in Open-End Mutual Funds,* 35 Rev. Fin. Stud. 1, 1–50 (2022).

[753] For example, a number of commenters indicated that swing pricing would reduce the viability of institutional prime funds as an asset class and that most if not all institutional investors will abandon funds subject to swing pricing. *See, e.g.,* Federated Hermes Comment Letter I. *Also see, e.g.,* ICI Comment Letter; Capital Group Comment Letter; JP Morgan Comment Letter; BlackRock Comment Letter.

[754] *See, e.g.,* Schwab Comment Letter.

[755] *See, e.g.,* Americans for Tax Reform Comment Letter; Better Markets Comment Letter.

[756] *See, e.g.,* Schwab Comment Letter; Better Markets Comment Letter.

[757] *See, e.g.,* Schwab Comment Letter.

[758] *See* Fidelity Comment Letter.

investors might not use the NAV method of accounting for gains and losses on money market fund shares.[759] In addition, a floating NAV requirement may be incompatible with popular cash management tools such as check-writing and wire transfers that are currently offered for many stable NAV money market fund accounts, as well as the use of stable NAV money market funds by sweep vehicles.[760]

8. Countercyclical Weekly Liquid Asset Requirements

The final rule could have imposed countercyclical weekly liquid asset requirements. For instance, during periods of market stress, the minimum weekly liquid asset threshold could decrease, for example, by 50%. The final amendments could have specified the definitions of market stress that would trigger a change in weekly liquid asset thresholds. Alternatively, the final amendments could have specified that decreases in weekly liquid asset thresholds would be triggered by Commission administrative order or notice.

As discussed in the Proposing Release, such alternatives could help clarify that money market funds' liquidity buffers are meant for use in times of stress and may provide assurance to investors that funds may utilize their liquidity reserves to absorb redemptions. To the degree that these alternatives may increase the willingness of affected funds to absorb redemptions out of daily or weekly liquid assets during times of stress, these alternatives may reduce liquidity costs borne by fund investors and may reduce incentives to redeem.

The Commission has not received comment in support of this alternative, but has received comment that countercyclical liquidity requirements are unnecessary.[761] Specifically, the commenter asserted that if there is no regulatory link between the level of liquidity and the potential imposition of fees or gates, money market fund managers will naturally be able to use liquid assets in a countercyclical way. The commenter further emphasized that countercyclicality would be challenging to administer by a regulator.

Investor redemptions out of institutional prime and institutional tax-exempt funds during market stress of 2020 demonstrated a high level of sensitivity of redemptions to threshold effects. The Commission continues to believe that any decrease in regulatory minimum thresholds may create investor concerns about liquidity stress in money market funds and trigger an increase in investor redemptions. Moreover, under the final amendments, affected money market funds will not be prohibited from operating below the daily or weekly liquid asset requirements. Importantly, the elimination of the tie between liquidity thresholds and fees and gates may more efficiently incentivize funds to use their liquidity buffers in times of stress, while removing threshold effects around weekly liquid asset levels.

9. Amendments Related to Potential Negative Interest Rates

As an alternative, the Commission could have restricted how money market funds may react to possible future market conditions resulting in negative fund yields by prohibiting, as proposed, money market funds from reducing the number of shares outstanding to seek to maintain a stable net asset value per share or stable price per share. In tandem, the Commission could have required, as proposed, that government and retail money market funds to keep records identifying intermediaries able to process orders at a floating NAV and to no longer transact with intermediaries that are not able to process orders at a floating NAV, as proposed.

To the degree that, relative to the final rule, a floating NAV provides greater transparency to investors by showing daily fluctuations in the NAV, this alternative may increase transparency of stable NAV performance for investors in the event of a negative interest rate environment.[762] However, these relative benefits may be dampened, if not eliminated, by the final rule's disclosure requirements about the board's determination to use an RDM as well as account statement disclosures. The alternative requirement related to fund intermediaries may facilitate a transition of stable NAV funds to floating NAV in a negative yield environment. One commenter also indicated that this alternative may result in greater global consistency among money market funds after the ultimate discontinuation of share cancellation under the European Money Market Funds Regulation.[763]

However, this alternative may impose significant operational burdens and costs on investors. Many investors in stable NAV funds may prefer a stable NAV investment even in a negative rate environment, and this alternative would eliminate this possibility.[764] In addition, for some investors, transitioning to a floating NAV could be even more complex and confusing than an RDM.[765] Finally, a floating NAV requirement may be incompatible with popular cash management tools such as check-writing and wire transfers that are currently offered for many stable NAV money market fund accounts.

The alternative requirement that stable NAV funds determine that their intermediaries have the capacity to process the transactions at floating NAV and the related recordkeeping requirements would also impose burdens on such funds. For example, affected money market funds may have to review their contracts with intermediaries, and some contracts may need to be renegotiated. Funds would have flexibility in how they make this determination for each financial intermediary, which may reduce these costs for some funds. Moreover, intermediaries that are currently unable to process transactions in stable NAV funds at a floating NAV may need to upgrade their processing systems to be able to continue to transact in government and retail funds. Many financial intermediary platforms that operate cash sweep programs and bank-like services using an infrastructure that does not accommodate a floating share price may be unable or unwilling to do so.[766] To that effect, the alternative may adversely impact the size of intermediary distribution networks of some funds, which can limit access or increase the costs of investor access to some affected funds. Thus, the alternative may present operational difficulties for intermediaries offering stable NAV funds and may reduce the ability of investors to use stable NAV funds for sweep accounting and other cash management services. Overall, the final rule and its disclosure requirements may serve to maintain similar transparency to the alternative, without adverse effects on the ability of investors to have a stable NAV in the event of negative yields.

As another alternative, the final amendments could have mandated that in the event of persistent negative interest rates, all stable NAV funds must use an RDM. Requiring stable NAV funds to use an RDM would eliminate

[759] *See supra* note 260 and accompanying text (discussing the NAV method).

[760] *See supra* paragraph accompanying note 345.

[761] *See* Federated Hermes Comment Letter I.

[762] *See, e.g.,* Northern Trust Comment Letter; CFA Comment Letter.

[763] *See, e.g.,* Northern Trust Comment Letter.

[764] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; Federated Hermes Comment Letter I; Allspring Funds Comment Letter.

[765] BNY Mellon Comment Letter.

[766] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; Federated Hermes Comment Letter I; Morgan Stanley Comment Letter; BNY Mellon Comment Letter.

NAV fluctuations in a negative yield environment, which may preserve the use of stable NAV funds for sweep accounting. Such an alternative may, thus, preserve or increase demand for government and retail money market funds relative to the final rule. This alternative may also increase comparability across stable NAV funds relative to the final rule. However, such an alternative would eliminate valuable flexibility for stable NAV funds to float the NAV, which may be optimal for some funds given their investor clientele and capabilities of their intermediary networks.

10. Amendments Related to WAL/WAM Calculation

The final rule will amend rule 2a–7 to require that WAM and WAL are calculated based on the percentage of each security's market value in the portfolio, as proposed. The Commission could have instead based the calculation on amortized cost of each portfolio security. Similar to the final amendments, such an alternative would also enhance consistency and comparability of disclosures by money market funds in data reported to the Commission and provided on fund websites. Thus, the alternative would achieve the same benefits as the final amendments in terms of enhancing transparency for investors and enhancing the ability of the Commission to assess the risk of various money market funds and increasing allocative efficiency. However, relative to the final amendments, the alternative may give rise to higher compliance costs. While all money market funds are required to determine the market values of portfolio holdings, no such requirement exists for amortized costs of portfolio securities. Thus, funds that do not currently estimate amortized costs would be required to do so for the WAL and WAM calculation. Moreover, the Commission continues to believe that amortized cost may be a poor proxy of a security's value if market conditions change drastically due to, for example, liquidity or credit stress, and if the fund is unable to hold the security until maturity. This may distort WAL and WAM calculations during market dislocations—when comparable and accurate information about fund risks may be most important for investment decisions.

While commenters generally supported the proposed approach,[767] one commenter disagreed with the proposed changes, but also with the alternative calculating WAM and WAL based on amortized cost of the portfolio instead of market value.[768] Specifically, the commenter stated that it calculates WAM and WAL using market value for floating NAV money market funds and amortized cost for retail and government money market funds. The commenter also stated that the only meaningful difference in these methodologies would be if one of the issuers of the portfolio securities had a credit problem, in which case the fund would immediately shift to using market value.[769] Further, the commenter stated that the fractional difference between the WAM and WAL calculated with amortized cost versus market value would not change either number calculated in actual days, rather than fractions of a day, and that any changes relative to the regulatory baseline would necessitate operational changes.

Differences between the WAM and WAL calculated with amortized cost versus market value may vary across funds and over time. As discussed above, while the difference between a fund's WAM or WAL calculated using amortized cost versus market value is likely to be small in many circumstances, there are also circumstances where this difference may be more significant, such as when a security's issuer experiences a credit event, during periods of market stress, or when interest rates rise rapidly, particularly for assets with longer maturities. We continue to believe that consistency and comparability of disclosures related to fund WAM and WAL across different money market funds and different types of money market funds may enhance Commission oversight and be valuable to investors, and we believe that requiring funds to use a uniform approach to the WAM and WAL calculations at all times mitigates any concerns about a fund not moving, or being slow to move, to a market-based value during times when there could be meaningful differences. In light of the above considerations, we continue to believe the final approach may be a more efficient way of accomplishing such comparability.

11. Form PF Amendments for Large Liquidity Fund Advisers

The Commission could have adopted Form PF amendments for large liquidity fund advisers with a greater level of detail requested. Alternatively, the Commission could have adopted the final Form PF amendments without including some or all of the new reporting requirements. For example, the final amendments could have amended Form PF without requiring new disclosures related to repurchase agreement transactions or related to investor information. Relative to the final amendments, alternatives that reduce (increase) the amount of information required to be reported in Form PF may have reduced (increased) the benefits of the reporting requirements as well as the direct and indirect costs borne by large liquidity fund advisers. As discussed above, one commenter questioned the value added of the proposed additional reporting,[770] and other commenters generally criticized the purported benefits of enhanced Form PF reporting.[771] Importantly, compliance with reporting requirements may involve significant fixed costs. As a result, the elimination of one or several items from the final amendments may not lead to a proportional reduction in direct costs. Moreover, these alternatives would not align reporting of large liquidity funds with that of money market funds, which invest in the same short-term funding markets. The final amendments may present a more complete and comparable picture of the short-term financing markets in which liquidity funds invest, and in turn, enhance the Commission and FSOC's ability to monitor and assess short-term financing markets and facilitate better regulatory oversight of those markets and their participants.

12. Disclosures

a. Eliminating Website Disclosure of Fund Liquidity Levels

The final amendments could have eliminated the requirement that money market funds post their daily and weekly liquid asset levels on their websites. As discussed above, the Commission understands that the public nature of fund liquid asset disclosures, in combination with the regulatory thresholds for the potential imposition of fees and gates, may have triggered a run on institutional money market funds and made other funds reluctant to use liquid assets to absorb redemptions if it meant approaching or falling below the regulatory threshold. Commenters have generally not discussed this alternative, although one commenter stated that the website disclosure should not be eliminated because, once the link of a potential fee or gate imposition is removed, the incentive for investors to monitor and redeem based

[767] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; Capital Group Comment Letter.

[768] *See* Federated Hermes Comment Letter I.

[769] *Id.*

[770] *See supra* note 709 and accompanying text; *see also* NYC Bar Comment Letter on File No. S7–01–22.

on liquidity is mitigated. The final amendments would partly mitigate run incentives surrounding disclosures of weekly liquid assets, by removing the tie between weekly liquid assets and the potential imposition of fees and gates, but also increasing minimum daily and weekly liquidity requirements and imposing a requirement to promptly report liquidity threshold events. Moreover, money market funds play an important asset transformation role and inherently carry liquidity risks. We continue to believe that public disclosures of money market fund liquidity convey important information to investors about the liquidity risks of their investments.

b. Alternatives to Form N–MFP Amendments

The Commission could have adopted Form N–MFP amendments without including some or all of the new reporting requirements.[772] While these alternatives may have reduced compliance burdens compared to the final amendments, compliance with disclosure requirements may involve significant fixed costs. As a result, the elimination of one or several items from the final amendments may not lead to a proportional reduction in compliance burdens. Moreover, information about repurchase agreement transactions, fund liquidity management, investor concentration and composition, and sales of securities into the market would provide important benefits of transparency for investors and would enhance Commission oversight.

The final amendments will require the disclosure of every liquidity fee in the reporting period by date. Alternatively, the final amendments could have required the disclosure of less information about when the fund applied liquidity fees. For example, the final amendments could have required disclosure of the lowest, median, and highest liquidity fee a fund applied in a given reporting period. Commenters did not generally discuss such alternatives or alternatives to similar proposed reporting requirements for swing pricing. Alternatives involving less information about fund liquidity fee practices and eliminating current website disclosures of daily fund flows would reduce the scope of the economic benefits and costs of the final amendments described above. To the degree that disclosures of liquidity fees may make liquidity fees more salient to investors and may lead funds to compete on fees, alternatives involving less disclosure about liquidity fees can reduce those effects. Moreover, to the degree that granular disclosure about historical liquidity fees can incentivize or inform strategic redemption behavior, alternatives involving less disclosure about liquidity fees can reduce those effects.

c. Alternatives to Form N-CR Amendments

The final amendments could have defined a liquidity threshold event for purposes of board notification and/or Form N-CR reporting to reflect a specified percentage decline from a fund's preferred weekly liquid asset and daily liquid asset.[773] Relative to the final rule, such an approach could offer additional flexibility for funds in setting up their board reporting and oversight of liquidity management. The magnitude of such benefits may be small if board notification thresholds are lower than Form N-CR reporting thresholds because fund managers are likely to keep the board apprised of any liquidity events triggering Form N-CR reporting. In addition, to the degree that these alternatives would allow funds to set up different Form N-CR reporting thresholds, they would reduce comparability of Form N-CR reported events for investors. Moreover, funds and fund managers may be incentivized by competitive pressures to reduce the salience of their liquidity threshold events, leading them to select thresholds for board and Form N-CR reporting that are lower than those in the final rule.

The final amendments could also have required money market funds to make notices concerning liquidity threshold events public with a delay (*e.g.,* 15, 30, or 60 days). As a related alternative, the Commission could have triggered the Form N-CR reporting requirement in the final rule if a fund is 50% below each of the daily and weekly liquidity requirements for a period of consecutive days.[774] As another alternative, the final amendments could have required that some or all information about the liquidity threshold event be kept confidential upon filing. Under the baseline, such funds are required to report daily and weekly liquid assets daily on fund websites. Relative to the final rule, these alternatives would introduce delays to the reporting of liquidity threshold events to investors on Form N-CR, reduce the frequency of such reporting, or decrease the amount of information in liquidity threshold event notices available to investors. To the degree that the publication of such notices provides investors with additional information about fund liquidity management and can trigger investor redemptions out of funds with low levels of weekly and daily liquid assets, the alternatives may reduce the risk of redemptions around liquidity thresholds and the increase the willingness of funds to absorb redemptions out of their weekly liquid assets relative to the final amendments.[775] However, relative to the final amendments, the alternatives would reduce the availability of a central source that investors could use to identify when money market funds fall more than 50% below liquidity requirements and understand the circumstances leading to the decline in liquidity. The delayed reporting alternative also would reduce the amount of information available to investors surrounding the context for the liquidity threshold events as notices are likely to clarify reasons for the threshold event. Thus, the alternative would reduce transparency for investors around liquidity management of affected money market funds, which may reduce allocative efficiency. Notably, a delay in publication of the notices may increase staleness of the information in the notices available to investors.

In addition, the final rule could have amended Form N-CR to include some of the new collections of information on Form N–MFP. For example, the final rule could have amended Form N-CR to include information about sales of securities into the market of prime funds that exceed a particular size. This alternative would enhance the timeliness of such reporting. Thus, the alternative may enhance transparency about fund liquidity management for investors, which may enhance informational and allocative efficiency and Commission oversight. However, the alternative would increase direct reporting burdens related to the filing of Form N-CR—costs that may flow through in part or in full to end investors in the form of fund expenses. Moreover, timely reporting of prime funds' sales of portfolio securities may signal fund liquidity stress to investors even where funds may be able to maintain their daily and weekly liquidity levels. This may influence investor decisions to redeem out of reporting funds; thus, relative to the final amendments, the alternative may place heavier redemption pressure on reporting funds.

[772] *See, e.g.,* Federated Hermes Comment Letter I; ICI Comment Letter; SIFMA AMG Comment Letter; BlackRock Comment Letter; CCMR Comment Letter.

[773] *See, e.g.,* ICI Comment Letter.

[774] *See, e.g.,* Federated Hermes Comment Letter I.

[775] *See, e.g.,* Dechert Comment Letter.

With respect to the structured data requirement for Form N-CR, the final amendments could have required Form N-CR to be submitted in the Inline eXtensible Business Reporting Language (Inline XBRL), rather than in N-CR-specific XML. We did not receive any comments on this alternative. As with N-CR-specific XML, Inline XBRL is a structured data language and would provide similar benefits to investors (*e.g.,* facilitating analysis of the event-related disclosures reported by money market funds on Form N-CR and thereby providing more transparency into potential risks associated with money market funds). From a filer compliance perspective, money market funds have experience complying with Inline XBRL compliance requirements, because they are required to tag prospectus risk/return summary disclosures on Form N–1A in Inline XBRL.[776] This existing experience would counter the incremental implementation cost of complying with an Inline XBRL requirement under the alternative.

However, unlike N-CR-specific XML, which the Commission would create specifically for Form N-CR submissions on EDGAR, Inline XBRL is an existing data language that is maintained by a public standards setting body, and it is used for different disclosures across various Commission filings (and for uses outside of regulatory disclosures). Due to the number of individual transactions that might be reported as Form N-CR data and the constrained nature of the content of Form N-CR and the absence of a clear need for the N-CR disclosures to be used outside the Form N-CR context, the alternative to include an Inline XBRL requirement might result in formatting for human readability of tabular data within a web browser that provides no additional analytical insight. This would likely include more complexity than is called for by the disclosures on Form N-CR, thus potentially making the disclosures more burdensome to use for analysis and possibly muting the benefits to investors of a structured data requirement, compared to the final rule's N-CR-specific XML requirement.

13. Sponsor Support

The final amendments could have required money market fund sponsors to provide explicit sponsor support to cover dilution costs. As discussed in the Proposing Release, dilution occurs because shareholders remaining in the fund effectively buy back shares at NAV from redeeming investors. The assets underlying those shares are eventually sold at a price that may differ from that NAV for the reasons described in the baseline, causing dilution in some cases. This alternative may significantly change incentives around the liquidity mismatch between money market fund assets and liabilities. Specifically, this alternative would give fund sponsors a more direct incentive to manage the amount of dilution risk they impose on a fund via their choice of fund investments.

As discussed in the Proposing Release, directly exposing the sponsor, rather than money market fund investors, to the dilution risk associated with the difference between NAV and the ultimate liquidation value of the fund's underlying securities could have several benefits. First, money market funds may have a stronger incentive to overcome any operational impediments that expose them to unnecessary risk. Second, the amount of required operating capital to process redemptions/subscriptions would be higher for money market funds that held relatively less liquid securities, and money market funds would have to charge higher fees to raise that capital. Such fees would externalize the costs of investing in less liquid assets via money market funds. As those fees increase, money market funds that hold less liquid assets might become less desirable to investors, and money market fund investors might select into other structures, such as closed-end funds, that are a more natural fit with illiquid assets. These benefits may be reduced to the degree that the sponsor support requirement may incentivize money market funds to take additional risks to recoup the sponsor's costs or may incentivize fund managers to increase risk taking due to the backstop of the sponsor support.

The effects of sponsor support on investors may be mixed. Sponsor support may increase the ability of investors to redeem their shares in full without bearing liquidity costs. However, sponsor support could lead some investors to believe that their investments carry no risk and may make investors less discerning in their choice of money market fund allocations. Moreover, sponsor support reduces investor risk only to the degree that fund sponsors are well capitalized and easily capable of providing sponsor support. Uncertainty surrounding the ability of the sponsor to provide support to the money market fund could trigger a wave of shareholder redemptions, particularly during stressed conditions.

The Commission has received comment that such an alternative approach may significantly disrupt the money market fund industry.[777] First, it would make sponsoring money market funds a capital intensive business, which may create barriers to entry into the money market fund industry, disadvantage smaller funds and fund complexes, and increase concentration. Second, it may cause fund sponsors to opt, instead, for other open-end funds, ETFs, or closed-end funds as vehicles for certain less liquid assets. Third, since the costs of sponsor support may be passed along to investors in part or in full in the form of, for example, higher expense ratios, it may reduce fund yields after expenses. These factors are, thus, likely to reduce the attractiveness of money market funds to investors and the number of available money market funds, adversely impacting investor choice and the efficiency of investors' portfolio allocations. The alternative, may thus, significantly reduce the number of fund sponsors offering money market funds and the number of money market funds available to investors. These adverse effects may flow through to institutions, such as banks, and to leveraged participants, such hedge funds, that rely on banks for liquidity and capital formation.

14. Capital Buffers

The final amendments could have required that money market funds maintain a capital or ''NAV'' buffer,[778] or a specified amount of additional assets available to absorb daily fluctuations in the value of the fund's portfolio securities. For example, one option would require that stable NAV money market funds have a risk-based NAV buffer of up to 1% to absorb day-to-day fluctuations in the value of the funds' portfolio securities. Floating NAV money market funds could reserve their NAV buffers to absorb fund losses under rare circumstances only, such as when a fund suffers a large drop in NAV or is closed. The required minimum size of a fund's NAV buffer could be determined based on the composition of the money market fund's portfolio, with specified buffer requirements for daily

[776] *See* Instruction C.3.g to Form N–1A; 17 CFR 232.405(b)(2). Effective July 2024, money market funds will also be subject to Inline XBRL requirements for shareholder reports they file on Form N–CSR. *See* Tailored Shareholder Reports Adopting Release, *supra* note 347; 17 CFR 232.405(b)(2).

[777] *See, e.g.,* CCMR Comment Letter, Fidelity Comment Letter; *see also* 87 FR 7320.

[778] Capital (or ''NAV'') buffers, which could be structured in a variety of ways, can provide dedicated resources within or alongside a fund to absorb losses and can serve to absorb fluctuations in the value of a fund's portfolio, reducing the cost to taxpayers in case of a run. *See* President's Working Grp. on Fin. Mkts., supra note 544.

liquid assets, other weekly liquid assets, and all other assets.

Some commenters supported the use of capital buffers as a mechanism to stabilize money market funds in times of market stress.[779] One commenter indicated that operationalizing the capital buffer by adding a loss-bearing, subordinated class of liabilities would not require changing the structure of current money market fund shares, but would make them less risky by converting them into senior liabilities.[780] Some commenters suggested the use of a bank safety standard that would implement a capital requirement of 3 to 4% of unsecured, non-government assets and suggested that such a buffer would only depress returns by approximately 5 basis points (0.05%).[781] One commenter indicated that capital buffers would aid money market funds by providing a layer of protection for investors, reducing the incentive to run in a crisis, and reducing the incentive for prime money market funds to take excessive risk.[782] This commenter also suggested the use of a subordinated share class that would absorb losses ahead of longer-term investors and, in exchange for bearing potential losses, the subordinated shareholders would be paid a risk premium.[783] This commenter also suggested an alternative approach that would require funds to buy capital protection from a regulated bank.[784] Other commenters stated that capital buffers would allow money market funds to sustain broad-based declines in asset values and to continue funding shareholder redemptions without resorting to fire sales that further depress share values in times of stress.[785] One commenter suggested that a mandatory buffer would reduce moral hazard and increase discipline in the management of money market funds, increasing investor confidence that money market funds could weather market stress.[786]

The capital buffer alternative may have four benefits. First, capital buffers may add ex ante loss-absorption capacity to a money market fund that could mitigate money market fund investors' risk of losses.[787] This may reduce the incentive to redeem shares quickly in response to small losses or concerns about the liquidity of the money market fund portfolio, particularly during periods of severe liquidity stress.

Second, a NAV buffer would require money market funds to provide explicit sponsor support rather than the implicit and uncertain support under the current baseline. This would require funds to internalize some of the cost of the discretionary capital support sometimes provided to money market funds and to define in advance how losses will be allocated. In addition, a NAV buffer could reduce fund managers' incentives to take risk beyond what is desired by fund shareholders because investing in less risky securities reduces the probability of buffer depletion.

Third, a NAV buffer may also provide counter-cyclical capital to the money market fund industry because once a buffer is funded it remains in place regardless of redemption activity. With a buffer, redemptions increase the relative size of the buffer because the same dollar buffer now supports fewer assets. The NAV buffer, thus, strengthens the ability of the fund to absorb further losses, reducing investors' incentive to redeem shares.

Fourth, by reducing the NAV variability in money market funds, a NAV buffer may facilitate and protect capital formation in short-term financing markets during periods of modest stress. A NAV buffer could enable funds to absorb small losses and thus could reduce the need to trade into stressed markets. Thus, by adding resiliency to money market funds and enhancing their ability to absorb losses, a NAV buffer may benefit capital formation in the long term. A more stable money market fund industry may produce more stable short-term funding markets, which could provide more reliability as to the demand for short-term credit to the economy.

The Commission has also received comments that did not support the use of capital buffers and suggesting that such a mechanism would decrease the utility and attractiveness of money market funds and cause fund sponsors to exit the industry.[788] One commenter suggested that capital buffers are unnecessary and would severely and negatively impact shareholders, stating that capital buffers would not have been useful in March 2020 because buffers pertain to asset quality rather than liquidity, and noting also that institutional prime funds already operate with a floating NAV, which effectively addresses asset quality in a manner analogous to capital buffers.[789] This commenter suggested that if buffers are funded by retaining rather than distributing income, the buffers would take a significant amount of time to accumulate and, if funded by fund sponsors, managing money market funds would no longer be economically feasible.[790] Some commenters stated that even modestly sized capital buffers would substantially increase the cost of operating prime money market funds, to an extent that would likely prevent sponsors from offering such funds.[791]

The Commission continues to believe that this alternative may give rise to significant direct and indirect costs. In terms of direct costs, capital buffer requirements may be challenging to design and administer. First, from the standpoint of design of capital buffers, calibrating the appropriate size of the buffer as well as establishing the parameters for when a floating NAV fund should use its NAV buffer could present operational and implementation difficulties and, if not done effectively, could contribute to self-fulfilling runs on funds experiencing large redemptions. Second, from the standpoint of administering capital buffers, floating NAV funds would need to establish policies and procedures around the use of buffers, replenishing capital buffers when they are depleted and raising requisite financing, regulatory reporting, and investor disclosures about buffers, among other things. Depending on how a capital buffer is structured (*e.g.,* as sponsor provided capital or as a subordinated share class requiring shareholder approval), the alternative may involve other administrative, accounting, tax, and legal challenges and costs for fund sponsors and investors.

Importantly, the alternative may also involve three sets of indirect costs. First, the Commission continues to believe that the alternative would result in opportunity costs associated with maintaining a NAV buffer. Those contributing to the buffer would deploy valuable scarce resources to maintain a NAV buffer rather than being able to use the funds elsewhere. Estimates of these opportunity costs are not possible because the relevant data is not currently available to the Commission.

[779] *See, e.g.,* Profs. Ceccheti and Schoenholtz Comment Letter; Prof. Hanson *et al.* Comment Letter; Better Markets Comment Letter; Systemic Risk Council Comment Letter.

[780] *See* Profs. Ceccheti and Schoenholtz Comment Letter.

[781] *See, e.g.,* Profs. Ceccheti and Schoenholtz Comment Letter; Prof. Hanson *et al.* Comment Letter.

[782] *See* Prof. Hanson *et al.* Comment Letter.

[783] *Id.*

[784] *Id.*

[785] *See, e.g.,* Better Markets Comment Letter; Systemic Risk Council Comment Letter.

[786] *See* Better Markets Comment Letter.

[787] *See, e.g.,* President's Working Grp. on Fin. Mkts., *supra* note 544.

[788] *See, e.g.,* ICI Comment Letter; Fidelity Comment Letter; CCMR Comment Letter.

[789] *See* Fidelity Comment Letter.

[790] *Id.*

[791] *See, e.g.,* CCMR Comment Letter.

Second, entities providing capital for the NAV buffer, such as the fund sponsor, would expect to be paid a return that sets the market value of the buffer equal to the amount of the capital contribution. Since a NAV buffer is designed to absorb the same amount of risk regardless of its size, the promised yield, or cost of the buffer, increases with the relative amount of risk it is expected to absorb (also known as a leverage effect).

Third, money market funds with buffers may avoid holding riskier short-term debt securities (like commercial paper) and instead hold a higher amount of low yielding investments like cash, Treasury securities, or Treasury repos. This could lead money market funds to hold more conservative portfolios than investors may prefer, given tradeoffs between principal stability, liquidity, and yield. Moreover, the costs of establishing and maintaining a capital buffer would decrease returns to fund investors. The increased costs and decreased returns of a capital buffer requirement may decrease the size of the money market fund sector, which would affect short-term funding markets, and could lead to increased industry concentration. Moreover, this may alter competition in the money market fund industry as capital buffer requirements may be easier to comply with for bank-sponsored funds, funds that are members of large fund families, and funds that have a large parent.

Crucially, a NAV buffer does not protect shareholders completely from the possibility of heightened rapid redemption activity during periods of market stress, particularly in periods where the buffer is at risk of depletion, such as during March 2020. As the buffer becomes impaired (or if shareholders believe the fund may suffer a loss that exceeds the size of its NAV buffer), shareholders have an incentive to redeem shares quickly because, once the buffer fails, shareholders will experience sudden losses. Thus, the Commission continues to believe that capital buffers are unlikely to have prevented the liquidity stresses that arose in March 2020. At the same time, capital buffers could lead some investors to believe that their investments carry no risk, which may influence investor allocations and adversely impact allocative efficiency.

15. Minimum Balance at Risk

The final amendments could have required that a portion of each shareholder's recent balance in a money market fund be available for redemption only with a time delay. Under the alternative, all shareholders could redeem most of their holdings immediately without being restricted by the minimum balance at risk. This alternative also could include a requirement to put a portion of redeeming investors' holdback shares first in line to absorb losses that occur during the holdback period. A floating NAV fund could be required to use a minimum balance at risk mechanism to allocate losses only under certain rare circumstances, such as when the fund has a large drop in NAV or is closed.

Such an alternative could provide some benefits to money market funds. First, it would subordinate a portion of redeeming investors' shares to put them at greater risk if the fund suffers a loss, forcing redeeming shareholders to absorb liquidity costs during periods of severe market stress when liquidity is particularly costly and allocating liquidity costs to investors demanding liquidity when the fund itself is under stress.[792] Redeeming shareholders would bear first losses when the fund first depletes its buffer and then the fund's value falls below its stable share price within 30 days after their redemption. If the fund sells assets to meet redemptions, the costs of doing so would be incurred while the redeeming investor is still in the fund because of the delay in redeeming holdback shares. Third, it would provide the fund with a period of time to obtain cash to satisfy the holdback portion of a shareholder's redemption. This may provide time for potential losses in fund portfolios to be avoided since distressed securities could trade at a heavy discount in the market but may ultimately pay in full at maturity.

The Proposing Release recognized that implementing such an alternative would involve operational challenges and direct implementation costs. Such costs include costs of converting existing shares or issuing new holdback and subordinated holdback shares; changes to systems that would allow record-keepers to account for and track the minimum balance at risk and allocation of unrestricted, holdback, or subordinated holdback shares in shareholder accounts; and systems to calculate and reset average account balances and restrict redemptions of applicable shares. In addition, commenters indicated that such costs would extend to intermediaries and service providers and would be significant.[793] Funds subject to a minimum balance at risk may also have to amend or adopt new governing documents to issue different classes of shares with different rights: unrestricted shares, holdback shares, and subordinated holdback shares.

Moreover, this alternative would give rise to a number of indirect costs. First, the alternative may have different and unequal effects on investors in stable NAV and floating NAV money market funds. During the holdback period, investors in a stable NAV fund would only experience losses if the fund breaks the buck. Investors in a floating NAV fund, however, are always exposed to changes in the fund's NAV and would continue to be exposed to such risk for any shares held back. These differential effects could reduce investor demand for floating NAV money market funds.

Second, under the MBR alternative, there would still be an incentive to redeem in times of fund and market stress. The alternative could force shareholders that redeem more than a certain percent of their assets to pay for any losses, if incurred, on the entire portfolio on a ratable basis. The contingent nature of the way losses are distributed among shareholders forces early redeeming investors to bear the losses they are trying to avoid. Money market funds may choose to meet redemptions by selling assets that are the most liquid and have the smallest capital losses. Once a fund exhausts its supply of liquid assets, it may sell less liquid assets to meet redemption requests, possibly at a loss. If in fact assets are sold at a loss, the value of the fund's shares could be impaired, motivating shareholders to be the first to leave.

Third, the minimum balance at risk alternative would involve a loss of liquidity for redeeming investors akin to a partial redemption gate, which may reduce the utility of money market funds for investors and may cause fund sponsors to exit the industry.[794] Commenters stated that the alternative would alter money market funds significantly and drive investors and intermediaries away from the product to unregulated or less-regulated investment options, causing disruption to the short-term financing markets.[795] Another commenter also opposed the alternative and suggested that it reduces liquidity for retail and institutional investors.[796]

Fourth, the alternative may not have addressed the liquidity stresses that

[792] *See, e.g.,* President's Working Grp. on Fin. Mkts., *supra* note 544.

[793] *See, e.g.,* Fidelity Comment Letter.

[794] *Id.*

[795] *Id.*

[796] *See* Americans for Tax Reform Comment Letter.

occurred in March 2020.[797] The minimum balance at risk alternative generally impairs the liquidity of money market fund investments. To the degree that many investor redemptions in March 2020 were driven by exogenous liquidity needs (arising out of the Covid-19 pandemic), the Commission continues to believe that, under the alternative, investors would still have strong incentives to redeem assets they could in order access liquidity.

16. Liquidity Exchange Bank Membership

In the Proposing Release, the Commission discussed an alternative requiring prime and tax-exempt money market funds to be members of a private liquidity exchange bank (''LEB''). The LEB would be a chartered bank that would provide a liquidity backstop during periods of market stress. Money market fund members and their sponsors would capitalize the LEB through initial contributions and ongoing commitment fees, for example. During times of market stress, the LEB would purchase eligible assets from money market funds that need cash, up to a maximum amount per fund. The intent of the LEB would be to diminish investors' incentive to redeem in times of market stress while having the benefit of pooling liquidity resources rather than requiring each money market fund to hold higher levels of liquidity separately.

This alternative, as well as broader industry-wide insurance programs, could mitigate the risk of liquidity runs in money market funds and their detrimental impacts on investors and capital formation. In the Proposing Release, the Commission discussed how the alternative could replace money market funds' historical reliance on discretionary sponsor support, which has covered capital losses in money market funds in the past but, as discussed above, also contributes to these funds' vulnerability to liquidity runs. In addition, some sort of collective emergency insurance fund could be helpful to reduce the moral hazard of funds that may be reliant on future Federal Reserve facilities in times of market stress.

The Commission has received several comments in response to the proposal, which discussed the LEB alternative, and these comments did not support the LEB alternative as a realistic solution to improve money market funds' resiliency or limit future runs on money market funds.[798] Commenters emphasized two key sets of costs. First, a LEB would be complicated and require significant time and money to develop and operate.[799] Second, pooling capital from various money market funds could raise moral hazard and conflict of interest concerns, because money market funds relying on the LEB would not have an incentive to improve their own liquidity management.[800]

As discussed in the proposal, the LEB alternative may not significantly reduce the contagion effects from heavy redemptions at money market funds without undue costs. Specifically, because of the difficulties and costs involved in creating effective risk-based pricing for insurance and additional regulatory structures necessary to offset adverse incentive effects of membership in the LEB, this alternative has the potential to create moral hazard and encourage excessive risk-taking by money market funds. If the alternative increases moral hazard and decreases corresponding market discipline, it may in fact increase rather than decrease money market funds' susceptibility to liquidity runs. These incentives may be countered by imposing a very costly regulatory structure and risk-based pricing system; however, related costs are likely to be passed along to investors and may reduce the attractiveness of money market funds relative to bank products and other cash management tools. Finally, it may be difficult to create private insurance at an appropriate cost and of sufficient capacity for a several trillion-dollar industry that tends to have highly correlated tail risk.

17. Alternative Compliance and Filing Periods

The Commission considered alternative compliance dates for various aspects of the final amendments. First, the removal of the existing redemption gate provision and the link between weekly liquid assets and the imposition of a liquidity fee in rule 2a–7 are effective when the final rule is effective. As an alternative, the Commission could have adopted these provisions with a longer (such as a 6 month or a 12 month) effective date. Such alternatives would provide affected money market funds with more time to comply with these amendments. We believe that the removal of these provisions will be simple to implement.[801] Moreover, as discussed throughout this release, the Commission understands that the tie between weekly liquid asset thresholds and fees and gates did not provided intended benefits during March of 2020, but likely contributed to investor redemptions during the peak of market stress. Thus, these amendments may reduce self-fulfilling run incentives that may arise out of the tie between weekly liquid assets and redemption gates or fees, and alternatives delaying the effective date of these amendments may contribute to run risk in affected money market funds.

Second, the final amendments to minimum liquidity requirements have a compliance date that is 6 months after the effective date. As an alternative, these amendments could have been adopted with a longer compliance period, such as 12 months.[802] This alternative would provide additional time for affected funds to comply with the amended minimum liquidity requirements. For example, to the degree that some affected money market funds would have to change their portfolio composition by holding new assets, such funds would be required to make a determination that each security is an ''eligible'' security presenting minimal credit risk to the fund and have corresponding written records about the review. In addition, money market funds typically roll over assets when they mature and, if funds are required to change their portfolio composition to comply with the final rule, they may have to adjust this rollover process in favor of shorter-term securities of the same or similar issuers. To the degree that some investors may seek to reallocate their investments out of affected money market funds and into other cash management tools, a longer compliance period may allow funds time to stabilize their portfolios in the aftermath of potential investor redemptions. Finally, a longer compliance period may be especially valuable for funds most affected by other requirements of the final rule, such as the liquidity fee and reporting requirements. However, as discussed in section II.H, amendments to the liquidity minimums under rule 2a–7 represent increases to an existing framework, and as quantified in sections IV.C.2 and IV.D.2, many funds already maintain daily and weekly liquidity levels close to the newly adopted minimums. Moreover, the current rising rate environment may incentivize

[797] *See, e.g.,* Fidelity Comment Letter; ICI Comment Letter.

[798] *See, e.g.,* ICI Comment Letter; Fidelity Comment Letter; Americans for Tax Reform Comment Letter.

[799] *See, e.g.,* Fidelity Comment Letter; Americans for Tax Reform Comment Letter.

[800] *Id.*

[801] *See* State Street Comment Letter.

[802] *See, e.g.,* ICI Comment Letter; State Street Comment Letter.

affected money market funds to increase their daily and weekly liquidity and decrease the overall fund maturity, to take advantage of the increase in yields. To the degree that many affected funds may already be in compliance with the new thresholds, the benefits of these alternative compliance periods relative to the final rule may be limited. For instance, weighted average daily liquid asset level of affected funds is currently above 50%, with weighted average weekly liquid asset level currently above 60% of a fund's portfolio, well above the thresholds imposed by the final rule.[803]

Third, the Commission could have adopted alternative compliance dates for the mandatory and discretionary liquidity fee requirements. Under the final rule, affected funds will have to comply with the mandatory liquidity framework within 12 months after the effective date, and the discretionary liquidity framework within 6 months of that date. The Commission considered several related alternatives. For example, the final rule could have included a 2-year compliance period for the mandatory liquidity fee framework, as recommended by commenters for the proposed swing pricing requirement.[804] As another alternative, the final rule could have included a 1-year compliance period for the discretionary liquidity framework. Similarly, the final rule could have included the same 2-year or 1-year compliance period for both the mandatory and the discretionary liquidity frameworks. These alternatives would provide affected money market funds with additional time to adapt their operations and systems, coordinate with intermediaries and third party vendors, and implement the required policies and procedures. Notably, unlike the swing pricing framework, affected funds may already be familiar with liquidity fees due to their baseline ability to impose liquidity fees when the fund's weekly liquid assets fall below 30% under the current rules and the current requirement to impose a default liquidity fee when a fund's weekly liquid assets fall below 10% unless the board determines such a fee is not in the fund's best interests. Thus, many funds and their intermediaries may be positioned to more efficiently comply with the amended liquidity fee framework compared to the proposed swing pricing requirements. Importantly, such alternatives would delay the implementation of liquidity fees as an anti-dilution tool and reduce the amount of dilution recaptured by funds benefitting non-redeeming investors until the compliance date, relative to the final rule.

Fourth, the Commission has considered alternative effective dates for the disclosure requirements in the final rule. For example, the final rule could have included a 12 month implementation period for any new and revised reporting requirements as suggested by some commenters in response to the proposal.[805] As another alternative, the final rule could have included an 18 or 24 month implementation period for all reporting and disclosure requirements as suggested by other commenters.[806] Similar to the above alternatives regarding longer compliance periods for the liquidity fee framework, such alternatives could reduce costs and provide greater flexibility to affected money market funds in complying with the final amendments. However, as discussed in section II.H, the final rule removes several of the proposed reporting requirements that are likely to be among the most burdensome for affected funds, including the proposed requirements about lot-level reporting and disaggregated reporting for repurchase agreements in Form N–MFP and Form PF. Such modifications to the final amendments may reduce compliance burdens on filers relative to the proposal. While the final disclosure and reporting requirements will still pose cost increases on affected funds, as estimated in section V (PRA), the Commission continues to believe that the final disclosure and reporting amendments will result in important benefits for transparency to investors and Commission oversight. As discussed in section II.H, we believe that the implementation period for amendments to disclosures in the final rule provides adequate time for affected funds and advisers to compile and review the information that must be disclosed. The Commission also could have adopted alternative filing periods for various forms. For example, the Commission could have extended the filing period for Form N–MFP to 7, 8, or 10 business days after the end of each month instead of the current 5 business day filing period. Such alternatives would increase the amount of time affected funds have to review and verify reported data and information, which can reduce the risk of error in the submitted data and information to the Commission. Importantly, as discussed in section II, the final rule will remove some of the most data intensive reporting requirements of lot-level reporting and disaggregated reporting of repurchase agreements, which may reduce these benefits of the alternatives relative to the final rule. Moreover, such alternatives would increase filing delays and reduce the timeliness of information available to investors and to the Commission. These effects may be particularly acute in times of market stress, when there may be greater investor scrutiny of money market funds and their liquidity risk.

E. Effects on Efficiency, Competition, and Capital Formation

The final amendments are intended to reduce run risk, mitigate the liquidity externalities transacting investors impose on non-transacting investors, and enhance the resilience of money market funds, which may serve to protect money market fund investors. To the degree that the final amendments would increase the resilience of money market funds, they may also enhance the availability of wholesale funding liquidity to market participants and increase their ability to raise capital, particularly during severe market stress, facilitating capital formation. In addition, the final amendments may reduce the probability that runs would result in future government interventions in securities markets, inform investors about liquidity risks of their money market fund investments, and enhance the ability of investors to optimize their portfolio allocations, contributing to greater informational and allocative efficiency.

The final amendments may enhance the efficiency of liquidity provision. Specifically, money market funds and issuers of short-term debt that money market funds hold benefit from perceived government backstops and the safety and soundness of the financial system. When the liquidity of underlying assets in money market fund portfolios is impaired, investors benefit from selling money market fund shares before or instead of selling assets that funds hold. Thus, in times of market stress, liquidity demand may be directed to money market funds even though the relative cost of liquidity in money market funds may be greater, resulting in inefficient provision of liquidity. While the final amendments would not result in money market funds fully internalizing the costs of investing

[803] *See Money Market Fund Statistics Form N–MFP Data, available at https://www.sec.gov/files/mmf-statistics-2023-03.pdf.*

[804] *See, e.g.,* SIFMA AMG Comment Letter; ICI Comment Letter; Invesco Comment Letter; State Street Comment Letter; Bancorp Comment Letter; Federated Hermes Comment Letter I; Capital Group Comment Letter; CCMR Comment Letter.

[805] *See, e.g.,* ICI Comment Letter; Invesco Comment Letter; State Street Comment Letter.

[806] *See* T. Rowe Comment Letter.

in illiquid assets, to the degree that the final amendments would reduce the need for future implicit government backstops in times of stress, the final amendments may result in more efficient provision of liquidity.

Moreover, the final liquidity fee framework may enhance allocative efficiency. To the degree that some institutional investors may not be aware of the dilution risk of affected money market funds, the liquidity fee requirement may increase investor awareness of such risks. As discussed above, the liquidity fee requirement could cause some investors to move their assets to government money market funds to avoid the possibility of paying liquidity costs of redemptions. Government money market funds may be a better match for these investors' preferences, however, in that government money market funds face lower liquidity costs and these investors may be unwilling to bear any liquidity costs. In addition, the liquidity fee framework may also attract new investors, such as investors that tend to redeem infrequently, into prime and tax-exempt money market funds. Moreover, this aspect of the final rule may dampen spillovers of run risk from money market funds to other vehicles and markets in times of stress.

The final disclosure requirements are expected to enhance informational efficiency. To the degree that some investors may currently be uninformed about liquidity risks of money market fund investments, the liquidity fee and disclosure requirements may increase transparency about liquidity costs transacting investors impose on remaining fund investors and liquidity risks in money market funds. While many investors may use money market funds as cash equivalents, money market funds use capital subject to daily or intraday redemptions to invest in portfolios that may include less liquid assets. This gives rise to liquidity risk and liquidity externalities between transacting and non-transacting investors, as discussed throughout the release. The possibility that a fund may charge a liquidity fee as a result of net redemptions, as well as the final disclosure requirements may help inform investors about the liquidity risks inherent in money market funds and liquidity costs of redemptions, particularly during times of stress. To the degree that greater transparency about liquidity risk of money market funds may lead some risk averse investors to use other instruments, such as banking products, in lieu of money market funds for cash management, allocative efficiency may increase.

The final amendments may have three groups of competitive effects. First, amendments to liquidity requirements may affect competition among prime money market funds. As discussed in detail in section IV.C.2, many affected funds already have liquidity levels that would meet or exceed the final minimum daily and weekly liquid asset thresholds. However, other funds would have to rebalance their portfolios to come into compliance with the final amendments, which may reduce the yields they are able to offer investors. The final amendments may, thus improve the competitive standing of funds that currently have higher levels of daily and weekly liquidity relative to funds that currently do not and may, thus, be able to offer higher yields to investors.

Second, the final amendments may influence the competitive standing of prime money market funds relative to government money market funds. The elimination of redemption gates and removal of the link between weekly liquid assets and liquidity fees may reduce the risk of runs on prime money market funds and may protect the value of investments of non-transacting shareholders. However, the final amendment's liquidity fee framework may increase the variability of prime money market funds returns, while higher liquidity requirements may reduce the yields they are able to offer to investors. This may reduce their attractiveness to investors and may result in a greater reallocation of capital from prime to government funds, bank deposit accounts, and other types of liquid vehicles.

Third, due to economies of scale, costs of the final amendments may be more easily borne by larger money market fund families and their service providers.[807] To the degree that such costs may be significant for some money market fund families, this may contribute to consolidation in the money market fund industry and reduce the number of intermediaries offering non-government money market funds to investors. Some or all of the costs of the final amendments may also be passed along to fund investors in the form of higher expense ratios or reduced availability of certain fund offerings. However, as discussed throughout this release, the final amendments have been tailored to reduce compliance costs, while preserving the benefits to investors, funds, and securities markets, which may partly mitigate these effects.

The final amendment's increases to the minimum liquidity thresholds may reduce access to and increase costs of raising capital for some issuers of short-term debt, thereby potentially negatively affecting capital formation. Moreover, to the degree that raising liquidity thresholds may reduce money market fund yields and to the extent that liquidity fees may increase uncertainty about investors' redemption costs, the final amendments may reduce the viability of prime money market funds as an asset class. This reallocation may be efficient to the extent that government money market funds or banking products, if insured and if such insurance is correctly priced, may be more suitable for cash management by liquidity risk averse investors. Moreover, banking entities insured by the Federal Deposit Insurance Corporation (FDIC) pay deposit insurance assessments, whereas money market funds do not internalize any portion of government interventions or externalities they impose on other investors in the same asset classes.[808]

Nevertheless, potential decreases in the size of the prime money market fund sector may have adverse follow-on effects on capital formation and the availability of wholesale funding liquidity to issuers and institutions seeking to arbitrage mispricings across markets. Issuers may respond to such changes by shifting their commercial paper and certificate of deposit issuance toward longer maturity instruments, which may reduce their exposure to rollover risk.

These aspects of the final amendments may be borne disproportionately by global or foreign banking organizations that rely on money market funds for dollar funding. Specifically, some research has explored the effects of outflows from prime money market funds into government money market funds around the 2014 money market fund reforms on business models and lending activities of foreign banking organizations in the U.S. To the degree that the final amendments would result in further outflows from prime money market funds, banking organizations reliant on unsecured funding from money market funds may

[807] *See, e.g.,* Federated Hermes Comment Letter I.

[808] *If* some of the funds flow out of the money market fund sector and into the banking sector, and *if* potential future stresses in the banking sector require government intervention, this could, under some circumstances, increase the magnitude of such intervention. *See, e.g.,* Federated Hermes Comment Letter I. However, flows between the banking and money market fund sectors may be highly sensitive to, among others, the spread between money market fund and bank rates. In addition, during the recent stresses in the banking sector in 2023, funds flowed out of certain banks and into certain money market funds, pointing to a trend to diversify portfolios across asset classes, as discussed in further detail in section IV.B.1.b.

reduce arbitrage positions and investments in illiquid assets, rather than reducing lending.[809] However, reduced wholesale dollar funding from money market funds may also lead to a reduction in capital formation through dollar lending by affected banks, which may reduce the dollar borrowing ability of firms reliant on affected banks.[810]

The final amendments related to the methods of calculation of weighted average maturity and weighted average life may increase consistency and comparability of disclosures by money market funds in data reported to the Commission and provided on fund websites. These amendments, therefore, may reduce informational asymmetries between funds and fund investors about interest rate and liquidity risk exposures across fund portfolios. To the degree that consistency and comparability of WAM and WAL information may inform investors and may influence their capital allocation decisions, the final amendments may improve allocative efficiency. The final amendments related to the calculation of WAM and WAL are not expected to affect competition and capital formation.

The final amendments related to Form PF reporting requirements for large liquidity fund advisers may enhance the Commission's and FSOC's oversight, which may promote better functioning and more stable short-term funding markets and may, thus, lead to increases in efficiency of such markets and may facilitate capital formation in large liquidity funds. The additional, more granular, and timely data collected on the amended Form PF about large liquidity fund advisers may help reduce uncertainty about risks in the U.S. financial system and inform and frame regulatory responses to future market events and policymaking. It may also help develop regulatory tools and mechanisms that could potentially be used to make future systemic crisis episodes less likely to occur and less costly and damaging when they do occur. In addition, these amendments may improve the efficiency and effectiveness of the Commission's and FSOC's oversight of large liquidity fund advisers by enabling them to manage and analyze information related to the risks posed by large liquidity funds more quickly, more efficiently, and more consistently. Form PF amendments for large liquidity fund advisers are not expected to have significant effects on competition.

V. Paperwork Reduction Act

A. Introduction

Certain provisions of the final amendments to rule 2a–7 and Forms N–1A, N–CR, N–MFP, and PF contain ''collection of information'' requirements within the meaning of the PRA.[811] The Commission published a request for comment on changes to these collection of information requirements in the Proposing Release and the Form PF Proposing Release and submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[812] The titles for the existing collections of information are: (1) ''Rule 2a–7 under the Investment Company Act of 1940, Money market funds'' (OMB Control No. 3235–0268); (2) ''Form N–1A under the Securities Act of 1933 and under the Investment Company Act of 1940, registration statement of open-end management investment companies'' (OMB Control No. 3235–0307); (3) ''Rule 30b1–8 under the Investment Company Act of 1940, Current report for money market funds and Form N–CR, Current report, money market fund material events'' (OMB Control No. 3235–0705); (4) ''Rule 30b1–7 under the Investment Company Act of 1940, Monthly report for money market funds and Form N–MFP, Monthly schedule of portfolio holdings of money market funds'' (OMB Control No. 3235–0657); (5) ''Form PF and Rule 204(b)–1'' (OMB Control Number 3235–0679); and (6) ''Rule 31a–2: Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies'' (OMB Control No. 3235–0179).[813] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

B. Rule 2a–7

The final amendments to rule 2a–7 create new collection of information requirements and modify or remove existing requirements. These final amendments include: (1) removing the provisions that link liquidity thresholds and board determinations regarding potential imposition of redemption gates and liquidity fees, and related changes to website disclosure requirements; (2) new provisions that require institutional prime and institutional tax-exempt money market funds to adopt a liquidity fee framework and allow non-government money market funds to apply discretionary liquidity fees, and the associated board review, approved guidelines, and ongoing oversight; (3) new provisions requiring a money market fund to identify in its written stress testing procedures the minimum liquidity levels for stress testing; and (4) new provisions that permit a stable NAV fund to engage in share cancellation in a negative interest rate environment and the associated board determination and investor disclosure requirements.

The respondents to these collections of information will be money market funds. We estimate that there are 294 money market funds subject to rule 2a–7, although the new collections of information would each apply to certain subsets of money market funds, as reflected in the below table.[814] The new collections of information are mandatory for the identified types of money market funds that rely on rule 2a–7, except that the collection related to use of share cancellation will be necessary only for those funds seeking to use share cancellation instead of converting to a floating NAV. The final amendments are designed to enable Commission staff in its examinations of money market funds to determine compliance with the rule. To the extent the Commission receives confidential information pursuant to the collections of information, such information will be kept confidential, subject to the provisions of applicable law.[815]

In our most recent PRA submission for rule 2a–7, we estimated the annual aggregate compliance burden to comply

[809] *See, e.g.,* Alyssa Anderson et al., *Arbitrage Capital of Global Banks* (Finance and Economics Discussion Series 2021–032. Washington: Board of Governors of the Federal Reserve System, May 2021), *available at https://doi.org/10.17016/FEDS.2021.032. See also* Thomas Flanagan, *Funding Stability and Bank Liquidity* (Working Paper, Mar. 2020), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3555346* (retrieved from SSRN Elsevier database).

[810] *See, e.g.,* Victoria Ivashina, et al., *Dollar Funding and the Lending Behavior of Global Banks,* 130 Q.J. Econ. 1241, 1241–1281 (2015).

[811] 44 U.S.C. 3501 through 3521.

[812] 44 U.S.C. 3507(d); 5 CFR 1320.11.

[813] For the Commission's notice requesting comment on changes to the collection of information requirements in Form PF, *see* Form PF Proposing Release, *supra* note 14.

[814] Based on Form N–MFP filings, there were 294 money market funds as of Mar. 2023.

[815] *See, e.g.,* 5 U.S.C. 552. Exemption 4 of the Freedom of Information Act provides an exemption for trade secrets and commercial or financial information obtained from a person and privileged or confidential. Exemption 8 of the Freedom of Information Act provides an exemption for matters that are contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

with the collection of information requirement of rule 2a–7 is 293,516 burden hours with an internal cost burden of $73,612,364 and an external cost burden estimate of $52,300,000.[816]

[816] The most recent rule 2a–7 PRA submission was approved in 2022 (OMB Control No. 3235–0268). This includes a correction of a typographical error regarding the currently approved external cost estimate, which is reflected as $73,612,364 but should have been $52,300,000 as shown in the supporting statement. The estimates in the Proposing Release were based on earlier approved estimates (337,328 hours and $38,100,454 external cost burden), and these earlier approved estimates are reflected in the ''Proposed Estimates'' section of Table 15.

While the Commission did not receive any comments specifically addressing the estimated PRA burdens in the Proposing Release associated with the amendments to rule 2a–7, it did receive comments suggesting that implementation of some of the elements of the proposed amendments, including the associated collections of information, may be more burdensome than the Commission estimated at proposal.[817] However, several of the revisions made to the final amendments help alleviate many of the burdens commenters discussed in relation to the proposal, including for instance, burdens related to the proposed swing pricing requirements. We have adjusted the proposal's estimated annual burden hours and total time costs to reflect changes from the proposal, changes in the number of money market funds, and updated wage rates.

[817] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; Western Asset Comment Letter.

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the amendments to rule 2a–7.

Table 15: Burden Estimates for Rule 2a-7

	Internal initial burden hours	Internal annual burden hours[1]		Wage rate[2]	Internal time costs	Annual external cost burden
PROPOSED ESTIMATES[3]						
Removal of fee and gate provisions	0 hours	-7 hours	×	$1,562	-$10,935	
Number of funds		× 2			x 2	
Total annual burden for removal of fee and gate provisions (I)		14 hours			$21,870	
Swing pricing policies and procedures	54 hours	20 hours	x	$382	$7,640	
		2 hours		$4,470	$8,940	
Swing pricing board reporting		4 hours	x	$2,419	$9,676	
Swing pricing recordkeeping		4 hours	x	$113	$452	
Number of fund complexes		× 25			x 25	
Total annual burden for swing pricing requirement (II)		750 hours			$667,700	
Recordkeeping related to financial intermediary determinations	3 hours	2 hours		$110	$220	
Number of funds		× 265			x 265	
Total annual burden for determinations related to financial intermediaries (III)		530 hours			$58,300	
Total new annual burden (I +II + III)		1,266 hours			$704,130	
Current burden estimates		337,328 hours			$92,875,630	$38,100,454
Revised burden estimates		338,594 hours			$93,579,760	$38,100,454
FINAL ESTIMATES						
Removal of tie between liquidity threshold and fees and gates and associated board determinations	0 hours	-7 hours	×	$1,713[4]	-$11,991	
Number of funds[5]		× 2			x 2	
Total annual burden for removal of tie between liquicity threshold and fees and gates and associated board determinations (I)		-14 hours			-$23,982	
Guidelines and board review for mandatory and discretionary liquidity fees	12 hours[6]	3 hours	x	$368[7]	$1,104	
		2 hours[8]		$4,770[9]	$9,540	
		1 hour[10]		$425[11]	$425	
Number of funds[12]		× 111			x 111	
Total annual burden for liquidity fee requirements (II)		666 hours			$1,228,659	
Identification of minimum liquidity levels for stress testing policies	1 hour[13]	0.3 hour		$428[14]	$128	
Number of funds		x 294			x 294	
Total annual burden for amending stress testing policies (III)		88 hours			$37,632	
Determination and disclosures regarding share cancellation	6 hours[15]	2 hours[16]		$484[17]	$968	
		1 hour		$4,770[9]	$4,770	
Number of funds[18]		× 169			x 169	
Total annual burden for determinations related to share cancellation (IV)		507 hours			$969,722	
Changes to website disclosure related		-1 hour		$254[19]	-$254	

to fees and gates					
Number of funds[20]		x 1		x 1	
Other changes to website disclosure	1 hour	0.3 hour	$289[21]	$87	
Number of funds		x 294		x 294	
Total annual burden for website disclosure amendments (V)		87 hours		$25,324	
Total new annual burden (I+II+III+IV+V)		1,334 hours		$2,237,355	
Current burden estimates		293,516 hours		$73,612,364	$52,300,000[22]
Revised burden estimates		294,850 hours		$75,849,719	$52,300,000

Notes:

1. This estimate includes the initial burden estimates amortized over a three-year period.

2. The Commission's estimates of the relevant wage rates (with the exception of the board of directors) are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated wage figures are modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. These PRA estimates assume that the same types of professionals would be involved in the new requirements that we believe otherwise would be involved in complying with other information collection requirements in rule 2a-7.

3. For additional detail about the proposed estimates, *see* Proposing Release, *supra* note 5, at section IV.B.

4. Represents the wage rate and burden hour allocations the Commission used in its most recent PRA submission. In that submission, the Commission estimated 5 hours for an attorney (at a rate of $484 per hour) and 2 hours for a board of 9 directors (at a rate of $4,770 per hour).

5. In its most recent PRA submission, the Commission estimated that 2 funds per year would have weekly liquid assets below 30% of total assets, which would require a board determination of whether to impose fees or gates. Because our amendments would remove the gate provisions from the rule and would amend the liquidity fee provision's information collection requirements as otherwise reflected in this PRA, we are removing the burdens that have been allocated to these provisions of the current rule.

6. We are estimating for the purpose of this analysis that each fund would incur a one-time average burden of 9 hours to prepare liquidity fee guidelines in conformance with the final rule's liquidity fee provisions, with 4.5 hours spent by a senior accountant and 4.5 hours spent by a chief compliance officer. Since a fund board reviews and approves the liquidity fee written guidelines for determining the application and size of liquidity fees, we estimate a one-time burden of 3 hours per fund associated with the fund board's review and administration/delegation of the liquidity fee framework. We assume for these purposes that all affected fund boards will delegate responsibilities for day-to-day administration of mandatory liquidity fees to the fund's adviser or officers. The estimates reflect the average burden per fund, although on a per-fund basis burdens for institutional funds will likely be higher than burdens for non-institutional funds, given that institutional funds are subject to the mandatory liquidity fee provision as well as the discretionary fee provision.

7. Represents a blended wage rate of a senior accountant ($252 per hour) and an attorney ($484 per hour).

8. Reflects a one-time burden of 3 hours of board time, annualized over 3 years, plus an ongoing burden of 1 hour of board time per year to review liquidity fee guidelines and the delegate's liquidity fee determinations.

9. Represents an estimated cost per hour for an entire board of directors, assuming an average of 9 board members per board.

10. We estimate that each fund will spend 1 hour of compliance and professional legal time each year, on average, to review and amend its liquidity fee guidelines.

11. Represents an estimated cost per hour for a compliance attorney.

12. Includes prime and tax-exempt money market funds as of Mar. 2023. We assume for purposes of this analysis that no government money market funds will opt in to the discretionary liquidity fee framework. Although the estimates reflect a per-fund average, we believe that funds within the same fund complex would experience certain efficiencies in responding to the collection of information requirements. Depending on the size of the fund complex, per fund costs may be higher or lower than our estimated averages.

13. We estimate an initial burden of 1 hour per fund for determining and recording the minimum liquidity levels for fund stress testing policies.

14. Represents a blended wage rate of a senior portfolio manager ($383 per hour), a senior risk management specialist ($416 per hour), and an attorney ($484 per hour).

15. We estimate an initial burden of 6 hours per fund for determining whether the fund will use share cancellation in the event of negative fund yields, with 3 hours of board time and 3 hours of attorney time to prepare materials for board review and to prepare written records of board determinations.

16. We estimate that each fund will spend 1 hour of attorney time each year, on average, to update disclosures regarding the potential use of share cancellation in the event of negative fund yields.

17. Represents an estimated cost per hour for an attorney.

18. We estimate that not all stable NAV money market funds would seek to use share cancellation in the event of negative interest rates and, for purposes of this analysis, we assume that 70% of stable NAV money market funds would pursue such an approach. 169 funds represents 70% of the number of government and retail money market funds as of Mar. 2023, based on Form N-MFP data.

19. Represents the wage rate and burden hour allocations the Commission used in its most recent PRA submission. In that submission, the Commission estimated 1 hour for a webmaster (at a rate of $254 per hour) for 1 fund per year.

20. In its most recent PRA submission, the Commission estimated that 1 fund per year would be required to update its website to disclose information about the imposition and removal of liquidity fees and the suspension and resumption of fund redemptions. Because our amendments would remove the gate provisions from the rule and would no longer require website disclosures about the imposition of liquidity fees, we are similarly removing the burdens that have been allocated to these provisions.

21. Represents an estimated cost per hour for a webmaster.

22. This reflects a correction of a typographical error regarding the currently approved external cost estimate.

C. Form N–MFP

The final amendments to Form N–MFP include additional data collection and certain technical improvements that will assist our monitoring and analysis of money market funds. We are adopting amendments to: (1) increase the frequency of certain data points from weekly to daily; (2) collect new information about securities that have been disposed of before maturity; (3) collect new information about the composition and concentration of money market funds' shareholders; (4) collect new information about the use of liquidity fees and share cancellation; and (5) collect additional information about repurchase agreement transactions, as well as certain other information about the fund's portfolio securities. We are also adopting amendments to improve identifying information about the fund, including changes to better identify different categories of government money market funds, changes to identify privately offered funds that are used for internal cash management purposes, and amendments to provide the name and other identifying information for the registrant, series, and class. The final amendments to Form N–MFP also include several changes to clarify current instructions or items. In a change from the proposal, we are not adopting amendments to require funds to report lot-level information about portfolio securities (*e.g.,* the acquisition date for each security) or report disaggregated information about securities subject to repurchase agreements in all circumstances, among other changes.

The information collection requirements on Form N–MFP are designed to improve the availability of information about money market funds and assist the Commission in analyzing the portfolio holdings of money market funds, and thereby augment our understanding of the risk characteristics of individual money market funds and money market funds as a group, as well as industry trends. The final amendments enhance our oversight of money market funds and our ability to monitor and respond to market events. Preparing a report on Form N–MFP is mandatory for money market funds, and responses to the information collections will not be kept confidential.

The respondents to these collections of information will be money market funds. The Commission estimates there are 294 money market funds that report information on Form N–MFP although certain components of the proposed new collections of information would apply to certain subsets of money market funds, as reflected in the below table. We estimate that 35% of money market funds (or 103 money market funds) license a software solution and file reports on Form N–MFP in house. We estimate that the remaining 65% of money market funds (or 191 money market funds) retain the services of a third party to provide data aggregation and validation services as part of the preparation and filing of reports on Form N–MFP on the fund's behalf. We understand that the required data in the final amendments to Form N–MFP generally are already maintained by money market funds pursuant to other regulatory requirements or in the ordinary course of business. Accordingly, for the purposes of our analysis, we do not believe that the final amendments add significant burden hours for filers of Form N–MFP.

In our most recent PRA submission for Form N–MFP, we estimated the annual aggregate compliance burden to comply with the collection of information requirement of Form N–MFP is 44,263 burden hours with an internal cost burden of $14,385,475 and an external cost burden estimate of $2,613,300.[818]

In the Proposing Release, we estimated that the proposed amendments would require a money market fund to spend up to an additional 9 burden hours complying with the proposed amendments.[819] The Commission did not receive public comment regarding the PRA estimates for Form N–MFP in the Proposing Release. We did, however, receive comments suggesting that lot-level reporting and reporting disaggregated information about securities subject to repurchase agreements when the securities are issued by the same issuer would be burdensome.[820] After considering comments, we are not adopting those proposed requirements. We are revising our PRA estimates for the final amendments to reflect the changes from the proposed amendments, and updated data and wage rates.

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the amendments to Form N–MFP.

[818] This estimate is based on the last time the PRA submission for the rule's information collection was approved in 2022 (OMB Control No. 3235–0657). The estimates in the Proposing Release were based on earlier approved estimates (64,667 hours and $3,179,700 external cost burden), and these earlier approved estimates are reflected in the ''Proposed Estimates'' section of Table 16.

[819] As reflected in Table 16, certain components of the proposed amendments would apply to certain subsets of money market funds and therefore, the estimated additional annual hour burdens of the full scope of the proposed new collections of information would apply to the subject fund.

[820] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter; BlackRock Comment Letter; CCMR Comment Letter; Federated Hermes Comment Letter I.

Table 16: Burden Estimate for Form N-MFP

	Internal initial burden hours	Internal annual burden hours[2]		Wage rate[3]	Internal time costs	Annual external cost burden
PROPOSED ESTIMATES[1]						
Reporting on disposed securities	3 hours	2 hours	×	$304	$608	
Number of funds for disposed securities information		× 64			x 64	
Total new annual burden for disposed securities information (I)		128 hours			$38,912	
Other proposed amendments	9 hours	7 hours		$304	$2,128	$912
Number of funds		× 318			x 318	x 318
Total new annual burden for Other proposed amendments (II)		2,226 hours			$676,704	$290,016
Total new annual burden (I +II)		2,354 hours			$715,616	$290,016
Current burden estimates		64,667 hours			$6,754,832	$3,179,700
Revised burden estimates		67,021 hours			$7,470,448	$3,469,716
FINAL ESTIMATES						
Reporting on disposed securities	3 hours	2 hours[4]	×	$346[5]	$692	
Number of funds for disposed securities information[6]		× 60			x 60	
Total new annual burden for disposed securities information (I)		120 hours			$41,520	
Other proposed amendments	7.5 hours	5.5 hours[7]		$346[5]	$1,903	$912
Number of funds[8]		× 294			x 294	x 294
Total new annual burden for Other proposed amendments (II)		1,617 hours			$559,482	$268,128[9]
Total new annual burden (I +II)		1,737 hours			$601,002	$268,128
Current burden estimates		44,263 hours			$6,319,950	$2,613,300
Revised burden estimates		46,000 hours			$6,920,952	$2,881,428

Notes:

1. For additional detail about the proposed estimates, see Proposing Release, *supra* note 5, at section IV.B.

2. This estimate includes the initial burden estimates amortized over a three-year period.

3. See *supra* Table 15, at note 2. These PRA estimates assume that the same types of professionals would be involved in the new reporting requirements that we believe otherwise would be involved in preparing and filing reports on Form N-MFP.

4. This estimate assumes that, after the initial 3 hours that a fund would spend complying with the requirement to report on disposed securities, which we annualized over a 3-year period, the fund would incur 1 additional burden hour associated with ongoing compliance with this reporting requirement.

5. This represents a blended hourly rate of $347 for a Financial Reporting Manager ($339 per hour), Fund Senior Accountant ($252 per hour), Senior Database Administrator ($397 per hour), Senior Portfolio Manager ($383 per hour), and Compliance Manager ($360 per hour)). The blended hourly rate was calculated as ($339 + $252 + $397 + $383 + $360) / 5 = $346 rounded to the nearest whole dollar.

6. This reflects that our final amendments require that only prime money market funds report information about disposed securities on Form N-MFP. We estimate that there were 60 prime funds as of Mar. 2023, based on Form N-MFP filings.

7. This estimate assumes that, after the initial 7.5 hours that a fund would spend complying with the other amendments to Form N-MFP, which we annualized over a 3-year period, the fund would incur 3 additional burden hours associated with ongoing compliance with the reporting requirements.

8. We estimate that there were 294 money market funds as of Mar. 2023, based on Form N-MFP filings.

9. This estimate is based on the following information and calculations: (35% x $4,805 (the average cost to license a third-party software solution per year) = $1,681.75) + (65% x $11,440 (the average cost of retaining the services of a third-party vendor to prepare and file reports on Form N-MFP on the fund's behalf) = $7,436) = basis for existing external N-MFP filing costs. We estimate that the new Form N-MFP requirements will add an additional 10% costs (*e.g.*, ($1,681.75 + $7,436 = $9,117.75) x 10% = $912 per fund). $912 x 294 = $268,128.

D. Form N–CR

The amendments to Form N–CR will require a fund to file a report publicly when its investments are more than 50% below the minimum weekly liquid asset or daily liquid asset requirements. The amendments also remove the reporting events that relate to liquidity fees and redemption gates, as money market funds will no longer be permitted to impose redemption gates under rule 2a–7, and we believe other disclosure about the imposition of liquidity fees is more appropriate than Form N–CR disclosure under the final

rule's amended liquidity fee framework. In addition, the final amendments will require money market funds to file Form N–CR reports in a custom XML data language. The information collection requirements are designed to assist Commission staff in its oversight of money market funds and its ability to respond to market events. We estimate that there are 294 money market funds subject to Form N–CR reporting requirements, but a fund is required to file a report on Form N–CR only when a reportable event occurs.[821] Compliance with the disclosure requirements of Form N–CR is mandatory for money market funds, and the responses to the disclosure requirements will not be kept confidential.

In our most recent PRA submission for Form N–CR, we estimated that we would receive, in the aggregate, an average of 6 reports filed on Form N–CR per year. We also estimated the annual aggregate compliance burden to comply with the collection of information requirement of Form N–CR is 51 burden hours with an internal cost burden of $19,839, and an external cost burden estimate of $6,111.[822]

The Commission did not receive public comment regarding the PRA estimates for Form N–CR in the Proposing Release. We have adjusted the proposal's estimated annual burden hours and total time costs, however, to reflect updated data and wage rates.

Our most recent PRA submission for Form N–CR based the burden estimates on the number of Form N–CR reports filed between 2018 and 2020, and no funds filed reports related to liquidity fees or suspensions of redemptions during that period (or at any other time). As a result, we do not believe that removing the items from Form N–CR related to liquidity fees and suspensions of redemptions would affect the current burden estimates.

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the amendments to Form N–CR.

[821] Based on Form N–MFP filings, there were 294 money market funds as of Mar. 2023.

[822] The most recent Form N–CR PRA submission was approved in 2021 (OMB Control No. 3235–0705).

Table 17: Burden Estimates for Form N-CR

	Internal initial burden hours	Internal annual burden hours		Wage rate[1]	Internal time costs	Annual external cost burden
PROPOSED ESTIMATES[2]						
Reporting of liquidity threshold events	0 hours	4.5 hours	×	$492 (legal professional)	$2,214	
	0 hours	4 hours	×	$285 (financial professional)	$1,140	
Total annual burden per response		**8.5 hours[3]**			**$3,354**	
Number of responses		× 1			× 1	
Estimated burden for reporting of liquidity threshold events (I)		**8.5 hours**			**$3,354**	
Submission in a structured data language	0 hours	2 hours	×	$277 (programmer)	$554	
Number of responses		× 7[4]			× 7[4]	
Estimated burden for submission in a structured data format (II)		**14 hours**			**$3,878**	
Total estimated burden (I+II)		**22.5**			**$7,232**	
Current Burden Estimates		**51**			**$19,839**	**$6,111**
Revised Burden Estimates		**73.5**			**$27,071**	**$6,111**
FINAL ESTIMATES						
Reporting of liquidity threshold events	0 hours	4.5 hours	×	$560 (legal professional)	$2,520	
	0 hours	4 hours	×	$325 (financial professional)	$1,300	
Total annual burden per response		**8.5 hours[3]**			**$3,820**	**$1,187[5]**
Number of responses		× 1			× 1	x 1
Estimated burden for reporting of liquidity threshold events (I)		**8.5 hours**			**$3,820**	**$1,187**
Submission in a structured data language	0 hours	2 hours	×	$316 (programmer)	$632	
Number of responses		× 7[4]			× 7[4]	
Estimated burden for submission in a structured data format (II)		**14 hours**			**$4,424**	
Total estimated burden (I+II)		**22.5**			**$8,244**	**$1,187**
Current Burden Estimates		**51**			**$19,839**	**$6,111**
Revised Burden Estimates		**73.5**			**$28,083**	**$7,298**

Notes:

1. *See supra* Table 15, at note 2. These PRA estimates assume that the same types of professionals would be involved in the proposed and final reporting requirements that we believe otherwise would be involved in preparing and filing reports on Form N-CR. Based on inflation adjustments for 2023 in the wage rates for the final estimates, the financial professional category is the blended average hourly rate for a senior portfolio manager ($383), financial reporting manager ($339), and senior accountant ($252). The legal professional category is a blended average hourly rate for a deputy general counsel ($695) and compliance attorney ($425).

2. For additional detail about the proposed estimates, *see* Proposing Release, *supra* note 5, at section IV.E.

3. This estimated burden also includes notifying the board of liquidity threshold events, which will involve providing the same information within the same period as the Form N-CR report.

4. This estimate includes 6 reports filed per year in addition to the 1 estimated annual response resulting from the reporting of liquidity threshold events.

5. This estimate of additional external cost burden is based on the following calculation: 2.1 hours x $565 per hour for outside legal counsel = $1,187 per report. This estimate of the additional external cost burden associated with the new Form N-CR reporting item uses the same methodology of estimating additional external cost burden as the currently approved burden estimate.

E. Form N–1A

The final amendments to Form N–1A modify the narrative risk disclosure that money market funds must provide in their summary prospectuses. The modifications affect all types of money market funds and include changes pertaining to liquidity fees and suspensions of redemptions that are more likely to affect prime and tax-exempt money market funds. Further, the amendments streamline the information a fund will be required to disclose in its SAI about any liquidity fees imposed during the prior 10 years and removes SAI disclosure related to the suspension of redemptions. We estimate that streamlining the required SAI disclosure will not affect the current estimated burdens of Form N–1A because while we are reducing the amount of information a fund must report when it has imposed a liquidity fee, the mandatory liquidity fee requirement in the final rule will likely result in institutional funds imposing liquidity fees more frequently than under the current rule. Compliance with the disclosure requirements of Form N–1A is mandatory for money market funds, and the responses to the disclosure requirements will not be kept confidential.

The purpose of the information collection requirements on Form N–1A is to meet the filing and disclosure requirements of the Securities Act and the Investment Company Act and to enable funds to provide investors with information necessary to evaluate an investment in the fund. The final amendments to Form N–1A are designed to provide investors with information about a fund's use of liquidity fees, which investors can use to inform their investment decisions.

The respondents to these collections of information will be money market funds. The Commission estimates there are 294 money market funds that are subject to Form N–1A, although aspects of the new collections of information related to liquidity fees and the removal of temporary suspensions of redemptions generally will only apply to prime and tax-exempt money market funds. The Commission estimates there are 111 prime and tax-exempt money market funds.

In our most recent PRA submission for Form N–1A, we estimated the annual aggregate burden to comply with the collection of information requirement of Form N–1A is 1,672,077 burden hours with an internal cost burden of $474,392,078, and an external cost burden estimate of $132,940,008.[823]

The Commission did not receive public comment regarding the PRA estimates for Form N–1A in the Proposing Release. We have adjusted the proposal's estimated annual burden hours and internal time costs, however, to reflect changes in the final rule (*e.g.,* the removal of the proposed swing pricing requirement, which means affected money market funds will not be required to provide swing pricing disclosure) and updated wage rates and data.

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the amendments to Form N–1A.

[823] The most recent Form N–1A PRA submission was approved in 2019 (OMB Control No. 3235–0307).

Table 18: Burden Estimates for Form N-1A

	Internal initial burden hours	Internal annual burden hours[1]	Wage rate[2]	Internal time costs
PROPOSED ESTIMATES[3]				
Swing pricing-related disclosure	**2 hours**	**1.67 hours**	**$356**	**$595**
Number of funds for swing pricing-related disclosure		× 53		× 53
Estimated burden for swing pricing-related disclosure (I)		**89 hours**		**$31,535**
Removal of liquidity fee and redemption gate-related disclosure		**-0.5 hours**	**$356**	**-$178**
Number of funds for removal of liquidity fee and redemption gate-related disclosure		× 129		× 129
Estimated annual burden reduction for removal of fee and gate-related disclosure (II)		**-64.5 hours**		**-$22,962**
Total estimated burden (I-II)		**24.5**		**$8,573**
Current Burden Estimates		**1,672,077**		**$474,392,078**
Revised Burden Estimates		**1,672,101.5**		**$474,400,651**
FINAL ESTIMATES				
Amended narrative risk disclosure	**0.5 hours**	**0.17 hours[4]**	**$406[5]**	**$69**
Number of funds		× 294[6]		× 294[6]
Estimated burden for amended narrative risk disclosure		**50 hours**		**$20,286**
Total estimated burden		**50**		**$20,286**
Current Burden Estimates		**1,672,077**		**$474,392,078**
Revised Burden Estimates		**1,672,127**		**$474,412,364**

Notes:

1. This estimate includes the initial burden estimates amortized over a three-year period.

2. *See supra* Table 15, at note 2. These PRA estimates assume that the same types of professionals would be involved in the proposed disclosure requirements that we believe otherwise would be involved in preparing and filing registration statements on Form N-1A.

3. For additional detail about the proposed estimates, see Proposing Release, *supra* note 5, at section IV.F.

4. This estimate assumes that, after the initial 0.5 hours to amend the fund's narrative risk disclosure, funds would not have an ongoing burden given that the form provides the statement that funds must include.

5. This represents a blended rate for a compliance attorney ($425) and a senior programmer ($386).

6. The number of funds estimate is based on the number of money market funds reporting to the Commission on Form N-MFP as of Mar. 2023. The estimated burden is averaged across all money market funds, although prime and tax-exempt money market funds, and particularly institutional funds, will likely have a somewhat higher burden than government money market funds in updating their narrative risk disclosure.

F. Form PF

The final amendments to Form PF revise existing reporting requirements for large liquidity fund advisers. Large liquidity fund advisers generally include any adviser managing a liquidity fund and having at least $1 billion in combined regulatory assets under management attributable to liquidity funds and registered money market funds as of the end of any month in the prior fiscal quarter.[824]

The final amendments are designed to provide the Commission and FSOC with a more complete picture of the short-term financing markets in which liquidity funds invest and, in turn, enhance the Commission's and FSOC's ability to assess the potential market and systemic risks presented by liquidity funds' activities and facilitate our oversight of those markets and their participants. The final amendments will update reporting requirements in section 3 of Form PF, which relates to reporting requirements for large liquidity fund advisers. Therefore, the final amendments will affect large liquidity fund advisers and the estimated collection of information burdens below are limited to this affected group of Form PF filers. The

[824] *See* Instruction 3 to Form PF.

revised collection of information is mandatory for large liquidity fund advisers.

Responses to the information collection will be kept confidential to the extent permitted by law.[825] Form PF elicits non-public information about private funds and their trading strategies, the public disclosure of which could adversely affect the funds and their investors. The SEC does not intend to make public Form PF information that is identifiable to any particular adviser or private fund, although the SEC may use Form PF information in an enforcement action and to assess potential systemic risk.[826] SEC staff issues certain publications designed to inform the public of the private funds industry, all of which use only aggregated or masked information to avoid potentially disclosing any proprietary information.[827] The Advisers Act precludes the SEC from being compelled to reveal Form PF information except (1) to Congress, upon an agreement of confidentiality; (2) to comply with a request for information from any other Federal department or agency or self-regulatory organization for purposes within the scope of its jurisdiction; or (3) to comply with an order of a court of the United States in an action brought by the United States or the SEC.[828] Any department, agency, or self-regulatory organization that receives Form PF information must maintain its confidentiality consistent with the level of confidentiality established for the SEC.[829] The Advisers Act requires the SEC to make Form PF information available to FSOC.[830] For advisers that are also commodity pool operators or commodity trading advisers, filing Form PF through the Form PF filing system is filing with both the SEC and Commodity Futures Trading Commission (CFTC).[831] Therefore, the SEC makes Form PF information available to FSOC and the CFTC, pursuant to Advisers Act section 204(b), making the information subject to the confidentiality protections applicable to information required to be filed under that section. Before sharing any Form PF information, the SEC requires that any such department, agency, or self-regulatory organization represent to the SEC that it has in place controls designed to ensure the use and handling of Form PF information in a manner consistent with the protections required by the Advisers Act. The SEC has instituted procedures to protect the confidentiality of Form PF information in a manner consistent with the protections required in the Advisers Act.[832]

In our most recent PRA submission for Form PF, we estimated the annual aggregate burden to comply with the collection of information requirement of Form PF is 409,768 burden hours and an external cost burden estimate of $3,628,850.[833]

We did not receive public comment regarding the estimated burdens of the proposed amendments to section 3 of Form PF, which is the only section affected by the final amendments. However, in the broader context of the Commission's proposed amendments to Form PF, we received general comments indicating that we underestimated the burdens to implement the proposed amendments to the form.[834] We are not adjusting our estimates in response to these comments because it is unclear that these commenters were referring to the proposed amendments to section 3 and, moreover, we are not adopting certain proposed reporting requirements, such as required lot-level reporting and disaggregated reporting for securities subject to repurchase agreements in all circumstances, which may reduce the burden for filers. We have adjusted the proposal's estimated annual burden hours and total time costs to reflect updated wage rates and data.

The tables below summarize our PRA initial and ongoing annual burden estimates associated with the amendments to Form PF.

TABLE 19—ANNUAL HOUR BURDEN PROPOSED AND FINAL ESTIMATES FOR INITIAL FILINGS

Respondent[1]	Number of respondents = aggregate number of responses[2]	Hours per response		Hours per response amortized over 3 years[3]	Aggregate hours amortized over 3 years[4]
Large Liquidity Fund Advisers:					
Proposed Estimate	[5] 1	202	÷ 3 =	67	67
Final Estimate	[6] 1	202	÷ 3 =	67	67
Previously Approved	2	200	.....	588	1,176
Change	(1)	2	.....	(521)	(1,109)

Notes:

[1] We expect that the hourly burden will be most significant for the initial report because the adviser will need to familiarize itself with the new reporting form and may need to configure its systems in order to efficiently gather the required information. In addition, we expect that some large liquidity fund advisers will find it efficient to automate some portion of the reporting process, which will increase the burden of the initial filing but reduce the burden of subsequent filings.

[2] This concerns the initial filing; therefore, we estimate one response per respondent. The proposed and final changes are due to using updated data to estimate the number of advisers.

[3] We amortize the initial time burden over three years because we believe that most of the burden would be incurred in the initial filing. We use a different methodology to calculate the estimate than the methodology staff used for the previously approved burdens. We believe the previously approved burdens for initial filings inflated the estimates by using a methodology that included subsequent filings for the next two years, which, for quarterly filers, included 11 subsequent filings. For the requested burden, we calculate the initial filing, as amortized over the next three years, by including only the hours related to the initial filing, not any subsequent filings. This approach is designed to more accurately estimate the initial burden, as amortized over three years. Changes are due to using the revised methodology, and changes to section 3 of Form PF.

[4] (Number of responses) × (hours per response amortized over three years) = aggregate hours amortized over three years. Changes are due to (1) using updated data to estimate the number of advisers and (2) the new methodology to estimate the hours per response, amortized over three years.

[5] In the case of the proposed estimates, Private Funds Statistics show 23 large liquidity fund advisers filed Form PF in the fourth quarter of 2020. Based on filing data from 2016 through 2020, an average of 1.5 percent of them did not file for the previous due date. (23 × 0.015 = 0.345 advisers, rounded up to 1 adviser.)

[6] In the case of the final estimates, Private Funds Statistics show 21 large liquidity fund advisers filed Form PF in the third quarter of 2022. Based on filing data from 2017 through 2021, an average of 1.5 percent of them did not file during the prior year. (21 × 0.015 = 0.32 advisers, rounded up to 1 adviser.)

[825] *See* 5 CFR 1320.5(d)(2)(vii) and (viii).

[826] *See* 15 U.S.C. 80b–10(c).

[827] *See, e.g.,* Private Funds Statistics, issued by staff of the SEC Division of Investment Management's Analytics Office, which we have used in this PRA as a data source, *available at https://www.sec.gov/divisions/investment/private-funds-statistics.shtml.*

[828] *See* 15 U.S.C. 80b–4(b)(8).

[829] *See* 15 U.S.C. 80b–4(b)(9).

[830] *See* 15 U.S.C. 80b–4(b)(7).

[831] *See* 2011 Form PF Adopting Release, *supra* note 494.

[832] *See* 5 CFR 1320.5(d)(2)(viii).

[833] The most recent Form PF PRA submission was approved in 2021 (OMB Control No. 3235–0679).

[834] *See, e.g.,* Alternative Investment Management Association Limited and the Alternative Credit Council Comment Letter (Mar. 21, 2022) on File No. S7–0122; Investment Adviser Association Comment Letter (Mar. 21, 2022) on File No. S7–01–22; Form PF Proposing Release, *supra* note 14. The comment letters on Form PF Proposing Release (File No. S7–01–22) are available at: *https://www.sec.gov/comments/s7-01-22/s70122.htm.*

TABLE 20—ANNUAL HOUR BURDEN PROPOSED AND FINAL ESTIMATES FOR ONGOING QUARTERLY FILINGS

Respondent [1]	Number of respondents (advisers) [2]		Number of responses [3]		Hours per response		Aggregate hours
Large Liquidity Fund Advisers:							
Proposed Estimate	[4] 22	×	4	×	71	=	6,248
Final Estimate	[5] 20	×	4	×	71	=	5,680
Previously Approved	20	×	4	×	70	=	5,600
Change	0		0		1		80

Notes:
[1] We estimate that after an adviser files its initial report, it will incur significantly lower costs to file ongoing quarterly reports, because much of the work for the initial report is non-recurring and likely created system configuration and reporting efficiencies.
[2] Changes to the number of respondents are due to using updated data to estimate the number of advisers.
[3] Large liquidity fund advisers file quarterly.
[4] In the case of the proposed estimates, Private Funds Statistics show 23 large liquidity fund advisers filed Form PF in the fourth quarter of 2020. We estimated that one of them filed an initial filing, as discussed in Table 19: Annual Hour Burden Proposed and Final Estimates for Initial Filings. (23 total large liquidity fund advisers—1 adviser who made an initial filing = 22 advisers who make ongoing filings.)
[5] In the case of the final estimates, Private Funds Statistics show 21 large liquidity fund advisers filed Form PF in the third quarter of 2022. We estimated that one of them filed an initial filing, as discussed in Table 19: Annual Hour Burden Proposed and Final Estimates for Initial Filings. (21 total large liquidity fund advisers—1 adviser who made an initial filing = 20 advisers who make ongoing filings.)

TABLE 21—PROPOSED AND FINAL ANNUAL MONETIZED TIME BURDEN OF INITIAL FILINGS

Respondent [1]	Per response [2]		Per response amortized over 3 years [3]		Aggregate number of responses [4]		Aggregate monetized time burden amortized over 3 years
Large Liquidity Fund Advisers:							
Proposed Estimate	[5] $64,893	÷ 3 =	$21,631	×	1	=	$21,631
Final Estimate	[6] 73,391	÷ 3 =	24,644	×	1 response	=	24,644
Previously Approved	63,460			×	2	=	126,920
Change	9,931				(1)		(102,276)

Notes:
[1] We expect that the monetized time burden will be most significant for the initial report, for the same reasons discussed in Table 19: Annual Hour Burden Proposed and Final Estimates for Initial Filings. Accordingly, we anticipate that the initial report will require more attention from senior personnel, including compliance managers and senior risk management specialists, than will ongoing annual and quarterly filings. Changes are due to using (1) updated hours per response estimates, as discussed in Table 19: Annual Hour Burden Proposed and Final Estimates for Initial Filings, (2) updated aggregate number of responses, as discussed in Table 19: Annual Hour Burden Proposed and Final Estimates for Initial Filings, and (3) updated wage estimates. Changes to the aggregate monetized time burden, amortized over three years, also are due to amortizing the monetized time burden, which the previously approved estimates did not calculate, as discussed below.
[2] For the hours per response in each calculation, *see* Table 19: Annual Hour Burden Proposed and Final Estimates for Initial Filings.
[3] We amortize the monetized time burden for initial filings over three years, as we do with other initial burdens in this PRA, because we believe that most of the burden would be incurred in the initial filing. The previously approved burden estimates did not calculate this.
[4] *See* Table 19: Annual Hour Burden Proposed and Final Estimates for Initial Filings.
[5] In the case of the proposed estimates, for large liquidity fund advisers, we estimated that for the initial report, of a total estimated burden of 202 hours, approximately 60 percent would most likely be performed by compliance professionals and approximately 40 percent would most likely be performed by programmers working on system configuration and reporting automation (that is approximately 121 hours for compliance professionals and 81 hours for programmers). Of the work performed by compliance professionals, we anticipated that it would be performed equally by a compliance manager at a cost of $316 per hour and a senior risk management specialist at a cost of $365 per hour. Of the work performed by programmers, we anticipated that it would be performed equally by a senior programmer at a cost of $339 per hour and a programmer analyst at a cost of $246 per hour. (($316 per hour × 0.5) + ($365 per hour × 0.5)) × 121 hours = $41,200.50. (($339 per hour × 0.5) + ($246 per hour × 0.5)) × 81 hours = $23,692.50. $41,200.50 + $23,692.50 = $64,893.
[6] In the case of the final estimates, for large liquidity fund advisers, we estimate that for the initial report, of a total estimated burden of 202 hours, approximately 60 percent will most likely be performed by compliance professionals and approximately 40 percent will most likely be performed by programmers working on system configuration and reporting automation (that is approximately 121 hours for compliance professionals and 81 hours for programmers). Of the work performed by compliance professionals, we anticipate that it will be performed equally by a compliance manager at a cost of $360 per hour and a senior risk management specialist at a cost of $416 per hour. Of the work performed by programmers, we anticipate that it will be performed equally by a senior programmer at a cost of $386 per hour and a programmer analyst at a cost of $280 per hour. (($360 per hour × 0.5) + ($416 per hour × 0.5)) × 121 hours = $46,948. (($386 per hour × 0.5) + ($280 per hour × 0.5)) × 81 hours = $26,973. $46,958 + $26,973 = $73,931.

TABLE 22—PROPOSED AND FINAL ANNUAL MONETIZED TIME BURDEN OF ONGOING QUARTERLY FILINGS

Respondent [1]	Per response [2]		Aggregate number of responses		Aggregate monetized time burden
Large Liquidity Fund Advisers:					
Proposed Estimate	[3] $20,022	×	[4] 88	=	$1,761,936
Final Estimate	[5] 22,791	×	[6] 80	=	1,823,280
Previously Approved	29,216.25	×	80 responses	=	2,337,300
Change [7]	(6,425.25)	0	(514,020)		

Notes:
[1] We expect that the monetized time burden will be less costly for ongoing quarterly reports than for initial reports, for the same reasons discussed in Table 20: Annual Hour Burden Proposed and Final Estimates for Ongoing Quarterly Filings. Accordingly, we anticipate that senior personnel will bear less of the reporting burden than they would for the initial report. Changes are due to using (1) updated wage estimates, (2) updated hours per response estimates, as discussed in Table 20: Annual Hour Burden Proposed and Final Estimates for Quarterly Filings, and (2) updated aggregate number of responses. Changes to estimates concerning large liquidity fund advisers primarily appear to be due to correcting a calculation error, as discussed below.
[2] For the proposed estimates, we estimated that quarterly reports would be completed equally by (1) a compliance manager at a cost of $316 per hour, (2) a senior compliance examiner at a cost of $243, (3) a senior risk management specialist at a cost of $365 per hour, and (4) a risk management specialist at a cost of $203 an hour. ($316 × 0.25 = $79) + ($243 × 0.25 = $60.75) + ($365 × 0.25 = $91.25) + ($203 × 0.25 = $50.75) = $281.75, rounded to $282 per hour. For the final estimates, we estimate that quarterly reports would be completed equally by (1) a compliance manager at a cost of $360 per hour, (2) a senior compliance examiner at a cost of $276, (3) a senior risk management specialist at a cost of $416 per hour, and (4) a risk management specialist at a cost of $232 an hour. ($360 × 0.25 = $90) + ($276 × 0.25 = $69) + ($416 × 0.25 = $104) + ($232 × 0.25 = $58) = $321. To calculate the cost per response for each respondent, we used the hours per response from Table 20: Annual Hour Burden Proposed and Final Estimates for Quarterly Filings.
[3] In the case of the proposed estimates, cost per response for large liquidity fund advisers: $282 per hour × 71 hours per response = $20,022 per response.
[4] In the case of the proposed estimates, 22 large liquidity fund advisers × 4 responses annually = 88 aggregate responses.
[5] In the case of the final estimates, cost per response for large liquidity fund advisers: $321 per hour × 71 hours per response = $22,791 per response.
[6] In the case of the final estimates, 20 large liquidity fund advisers × 4 responses annually = 80 aggregate responses.

[7] The previously approved estimates appear to have mistakenly used a different amount of hours per response (105 hours), rather than the actual estimate for large liquidity fund advisers (which was 70 hours per response), causing the monetized time burden to be inflated in error. Therefore, the extent of these changes are primarily due to using the correct hours per response, which we now estimate as 71 hours, as discussed in Table 20: Annual Hour Burden Proposed and Final Estimates for Quarterly Filings. Correcting for the error in the previously approved estimates would result in a prior estimate of approximately $19,460 per quarterly filing ($278 per hour × 70 hours per response = $19,460) and a change of approximately $3,331 per quarterly filing associated with the final amendments ($22,791—$19,460 = $3,331).

TABLE 23—PROPOSED AND FINAL ANNUAL EXTERNAL COST BURDEN FOR ONGOING QUARTERLY FILINGS AS WELL AS INITIAL FILINGS

Respondent [1]	Number of responses per respondent [2]		Filing fee per filing [3]		Total filing fees	External cost of initial filing [4]		External cost of initial filing amortized over 3 years [5]		Number of initial filings [6]		Aggregate external cost of initial filing amortized over 3 years [7]	Total aggregate external cost [8]
Large Liquidity Fund Advisers													
Proposed Estimate	4	×	$150	=	$600	$50,000	÷ 3 =	$16,667	×	1	=	$16,667	[9] $30,467
Final Estimate	4	×	150	=	600	50,000	÷ 3 =	16,667	×	1	=	16,667	[10] 29,267
Previously Approved	4	×	150	=	600	50,000			×	2	=	100,000	113,200
Change	0		0		0	0				(1)		(83,333)	(83,933)

Notes:

[1] We estimate that advisers would incur the cost of filing fees for each filing. For initial filings, advisers may incur costs to modify existing systems or deploy new systems to support Form PF reporting, acquire or use hardware to perform computations, or otherwise process data required on Form PF.

[2] Large liquidity fund advisers file quarterly.

[3] The SEC established Form PF filing fees in a separate order. Since 2011, filing fees have been and continue to be $150 per quarterly filing. *See* Order Approving Filing Fees for Exempt Reporting Advisers and Private Fund Advisers, Advisers Act Release No. 3305 (Oct. 24, 2011) [76 FR 67004 (Oct. 28, 2011)].

[4] In the previous PRA submission for the rules, staff estimated that the external cost burden for initial filings would range from $0 to $50,000 per adviser. This range reflected the fact that the cost to any adviser may depend on how many funds or the types of funds it manages, the state of its existing systems, the complexity of its business, the frequency of Form PF filings, the deadlines for completion, and the amount of information the adviser must disclose on Form PF. We continue to estimate that the same cost range would apply.

[5] We amortize the external cost burden of initial filings over three years, as we do with other initial burdens in this PRA, because we believe that most of the burden would be incurred in the initial filing. The previously approved burden estimates did not calculate this.

[6] *See* Table 19: Annual Hour Burden Proposed and Final Estimates for Initial Filings.

[7] Changes to the aggregate external cost of initial filings, amortized over three years are due to (1) using updated data and (2) amortizing the external cost of initial filings over three years, which the previously approved PRA did not calculate.

[8] Changes to the total aggregate external cost are due to (1) using updated data and (2) amortizing the external cost of initial filings over three years, which the previously approved PRA did not calculate.

[9] In the case of the proposed estimates, Private Funds Statistics show 23 large liquidity fund advisers filed Form PF in the fourth quarter of 2020. (23 large liquidity fund advisers × $600 total filing fees) + $16,667 total external costs of initial filings, amortized over three years = $30,467 aggregate cost.

[10] In the case of the final estimates, Private Funds Statistics show 21 large liquidity fund advisers filed Form PF in the third quarter of 2022. (21 large liquidity fund advisers × $600 total filing fees) + $16,667 total external costs of initial filings, amortized over three years = $29,267 aggregate cost.

G. Rule 31a–2

Section 31(a)(1) of the Investment Company Act requires registered investment companies and certain others to maintain and preserve records as prescribed by Commission rules. Rule 31a–1 specifies the books and records that must be maintained. Rule 31a–2 specifies the time periods that entities must retain certain books and records, including those required to be maintained under rule 31a–1. The retention of records, as required by rule 31a–2, is necessary to ensure access by Commission staff to material business and financial information about funds and certain related entities. This information will be used by the Commission staff to evaluate fund compliance with the Investment Company Act and regulations thereunder. We are adopting amendments to require money market funds to retain books and records containing schedules evidencing and supporting each computation of a liquidity fee pursuant to rule 2a–7(c)(2). The respondents to these collections of information will be money market funds. The new collections of information are mandatory for the money market funds subject to rule 2a–7(c)(2). We estimate that there are 111 money market funds that will be subject to the collection of information requirements related to liquidity fees. To the extent the Commission receives confidential information pursuant to the collections of information, such information will be kept confidential, subject to the provisions of applicable law.[835]

In our most recent Paperwork Reduction Act submission for rule 31a–2, we estimated the annual aggregate compliance burden to comply with the collection of information requirement of rule 31a–2 is 606,982 burden hours with an internal cost burden of $52,200,418 and an external cost burden estimate of $111,751,674.[836]

The Commission did not receive public comment regarding the PRA estimates for the proposed amendments to rule 31a–2 in the Proposing Release. We have adjusted the proposal's estimated annual burden hours and internal time costs, however, to reflect changes in the final rule (*e.g.,* providing for mandatory and discretionary liquidity fees under rule 2a–7, instead of the proposed swing pricing requirement, which applied to a smaller subset of funds) and updated wage rates and data.

The table below summarizes our PRA annual burden estimates associated with the proposed amendments to rule 31a–2.

[835] *See supra* note 815.

[836] The most recent rule 31a–2 PRA submission was approved in 2022 (OMB Control No. 3235–0179). The estimates in the Proposing Release were based on earlier approved estimates (696,464 hours and $115,372,485 external cost burden), and these earlier approved estimates are reflected in the ''Proposed Estimates'' section of Table 24.

Table 24: Burden Estimates for Rule 31a-2

	Internal annual burden hours	Wage rate[1]		Internal time cost	Annual external cost burden
PROPOSED ESTIMATES[2]					
Annual burden associated with proposed swing pricing amendments for money market funds	1.5 hours	$64 (general clerk)	×	$96	$600
	1.5 hours	$97 (senior computer operator)	×	$146	
Number of funds	x 53			x 53	x 53
Total new annual burden	**159 hours**			**$12,826**	**$31,800**
Current Burden Estimates	**696,464 hours**			**$56,672,424**	**$115,372,485**
Revised Burden Estimates	**696,623**			**$56,685,250**	**$115,404,285**
FINAL ESTIMATES					
Annual burden associated with liquidity fee recordkeeping requirement	1.5 hours	$73 (general clerk)	×	$110	$600
	1.5 hours	$111 (senior computer operator)	×	$167	
Number of funds[3]	x 111			x 111	x 111
Total new annual burden	**333 hours**			**$30,747**	**$66,600**
Current Burden Estimates	**606,982 hours**			**$52,200,418**	**$111,751,674**
Revised Burden Estimates	**607,315 hours**			**$52,231,165**	**$111,818,274**

Notes:

1. *See supra* Table 15, at note 2. These PRA estimates assume that the same types of professionals would be involved in the new recordkeeping requirements that we believe otherwise would be involved in preserving records under rule 31a-2.

2. For additional detail about the proposed estimates, see Proposing Release, *supra* note 6, at section IV.C.

3. Includes prime and tax-exempt money market funds as of Mar. 2023. We assume for purposes of this analysis that no government money market fund will opt in to the discretionary liquidity fee framework.

VI. Regulatory Flexibility Act Certification

The Commission certified, pursuant to section 605(b) of the Regulatory Flexibility Act of 1980 (''RFA'') [837] that, if adopted, the proposed amendments to rule 2a–7, rule 31a–2, Forms N–MFP and N–CR under the Investment Company Act, Form N–1A under the Investment Company Act and the Securities Act, and Form PF under the Investment Advisers Act would not have a significant economic impact on a substantial number of small entities. The Commission included these certifications in section V of the Proposing Release and section V of the Form PF Proposing Release and requested comment on the certifications. Commenters did not respond to the requests for comment regarding the Commission's certifications, although some commenters discussed the potential effects of the proposed amendments on smaller money market funds or smaller private funds.[838] While we considered these comments, we continue to believe that the economic impact of the amendments on small entities will not be significant. With respect to the amendments for money market funds, only one money market fund is a small entity based on information in filings submitted to the Commission.[839] As for the Form PF amendments affecting large liquidity fund advisers, by definition no small entity on its own would be a large liquidity fund adviser subject to reporting on Form PF.[840] Large liquidity fund advisers that are required to report on Form PF are SEC-registered

[837] 5 U.S.C. 605(b).

[838] *See, e.g.,* Federated Hermes Comment Letter I; IDC Comment Letter; *see also* 2023 Form PF Adopting Release, *supra* note 494, at n.432.

[839] Under the Investment Company Act, an investment company is considered a small business or small organization if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. *See* 17 CFR 270.0–10.

[840] For purposes of the Advisers Act and the RFA, an investment adviser generally is a small entity if it: (1) has assets under management having a total value of less than $25 million; (2) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year. *See* 17 CFR 275.0–7.

investment advisers that advise at least one liquidity fund and manage, collectively with their related persons, at least $1 billion in combined liquidity fund and money market fund assets.[841]

While the final amendments include some modifications to the Commission's proposal, as discussed more fully above in section II, we believe these modifications generally will reduce the burdens of the proposal. Moreover, we do not believe that these modifications alter the basis upon which the certifications in the Proposing Release and the Form PF Proposing Release were made. Accordingly, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Statutory Authority

The Commission is adopting the rule and form amendments contained in this document under the authority set forth in the Investment Company Act, particularly sections 6, 8, 22, 24, 30, 31, and 38 thereof [15 U.S.C. 80a–1 *et seq.*]; the Advisers Act, particularly sections 204(b) and 211(e) thereof [15 U.S.C. 80b–1 *et seq.*]; the Securities Act, particularly sections 5, 6, 7, 10, and 19 thereof [15 U.S.C. 77a *et seq.*]; and the Exchange Act, particularly section 23 thereof [15 U.S.C. 78a *et seq.*].

List of Subjects in 17 CFR Parts 270, 274, and 279

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule and Form Amendments

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 1. The general authority citation for part 270 continues to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 2. Amend § 270.2a–7 by:
■ a. Revising paragraph (c)(2);
■ b. Adding paragraph (c)(3);
■ c. Revising paragraphs (d)(1)(ii) and (iii) and (d)(4)(ii) and (iii);
■ d. Adding paragraph (f)(4);
■ e. In paragraphs (g)(8)(i) introductory text and (g)(8)(ii)(A), removing the words ''have invested at least ten percent of its total assets in weekly liquid assets'' and adding, in their place, the words ''maintain the sufficient liquidity levels identified in its written procedures''; and
■ f. Revising paragraphs (h)(10) introductory text, (h)(10)(i)(B)(*2*), (h)(10)(iii), (iv), and (v), and (j).

The revisions and additions read as follows:

§ 270.2a–7 Money market funds.

* * * * *

(c) * * *

(2) *Liquidity fees.* Except as provided in paragraph (c)(2)(v) of this section, and notwithstanding section 27(i) of the Act (15 U.S.C. 80a–27(i)) and § 270.22c–1:

(i) *Discretionary liquidity fees.* If the fund's board of directors, including a majority of the directors who are not interested persons of the fund, determines that a liquidity fee is in the best interests of the fund, the fund must institute a liquidity fee (not to exceed two percent of the value of the shares redeemed).

(A) *Duration and application of discretionary liquidity fee.* Once imposed, a discretionary liquidity fee must be applied to all shares redeemed and must remain in effect until the money market fund's board of directors, including a majority of the directors who are not interested persons of the fund, determines that imposing such liquidity fee is no longer in the best interests of the fund.

(B) *Government money market funds.* The requirements of this paragraph (c)(2)(i) do not apply to a government money market fund. A government money market fund may, however, choose to rely on the ability to impose discretionary liquidity fees consistent with the requirements of this paragraph (c)(2)(i) and any other requirements that apply to liquidity fees (*e.g.,* Item 4(b)(1)(ii) of Form N–1A (§ 274.11A of this chapter)).

(ii) *Determination, duration, and application of mandatory liquidity fees.* If a money market fund that is not a government money market fund or a retail money market fund has total daily net redemptions that exceed five percent of the fund's net assets, or such smaller amount of net redemptions as the board determines, based on flow information available within a reasonable period after the last computation of the fund's net asset value on that day, the fund must apply a liquidity fee to all shares that are redeemed at a price computed on that day, in an amount determined pursuant to paragraph (c)(2)(iii) of this section.

(iii) *Amount of mandatory liquidity fees.* The amount of a mandatory liquidity fee must be determined pursuant to paragraph (c)(2)(iii)(A) of this section, except as provided in paragraph (c)(2)(iii)(C) or (D) of this section.

(A) *Good faith estimate of liquidity costs.* The fee amount must be based on a good faith estimate, supported by data, of the costs the fund would incur if it sold a pro rata amount of each security in its portfolio to satisfy the amount of net redemptions, including:

(*1*) Spread costs, such that the fund is valuing each security at its bid price, and any other charges, fees, and taxes associated with portfolio security sales; and

(*2*) Market impacts for each security. The fund must determine market impacts by first establishing a market impact factor for each security, which is a good faith estimate of the percentage change in the value of the security if it were sold, per dollar of the amount of the security that would be sold if the fund sold a pro rata amount of each security in its portfolio to satisfy the amount of net redemptions under current market conditions and, second, multiplying the market impact factor by the dollar amount of the security that would be sold. A fund may assume a market impact of zero for its daily liquid assets and weekly liquid assets.

(B) *Cost estimates by type of security.* For purposes of paragraph (c)(2)(iii)(A) of this section, a fund may estimate costs and market impacts for each type of security with the same or substantially similar characteristics and apply those estimates to all securities of that type rather than analyze each security separately.

(C) *Default fee amount.* If the costs of selling a pro rata amount of each portfolio security cannot be estimated in good faith and supported by data, the liquidity fee amount is one percent of the value of shares redeemed.

(D) *De minimis exception.* A fund is not required to apply a liquidity fee if the amount of the fee determined under paragraph (c)(2)(iii)(A) of this section is less than 0.01% of the value of the shares redeemed.

(iv) *Variable contracts.* Notwithstanding section 27(i) of the Act (15 U.S.C. 80a–27(i)), a variable insurance contract issued by a registered separate account funding variable insurance contracts or the sponsoring insurance company of such separate account may apply a liquidity fee pursuant to paragraph (c)(2) of this section to contract owners who allocate all or a portion of their contract value to a subaccount of the separate account that is either a money market fund or

[841] *See* Instruction 3 to Form PF.

that invests all of its assets in shares of a money market fund.

(v) *Master feeder funds.* Any money market fund (''feeder fund'') that owns, pursuant to section 12(d)(1)(E) of the Act (15 U.S.C. 80a–12(d)(1)(E)), shares of another money market fund (''master fund'') may not impose liquidity fees under paragraph (c)(2) of this section, provided however, that if a master fund, in which the feeder fund invests, imposes a liquidity fee pursuant to paragraph (c)(2) of this section, then the feeder fund shall pass through to its investors the fee on the same terms and conditions as imposed by the master fund.

(3) *Share cancellation.* A money market fund may not reduce the number of its shares outstanding to seek to maintain a stable net asset value per share or stable price per share unless:

(i) The money market fund calculates its share price pursuant to paragraph (c)(1)(i) of this section;

(ii) The fund has negative gross yield as a result of negative interest rates (''negative interest rate event'');

(iii) The board of directors determines that reducing the number of the fund's shares outstanding is in the best interests of the fund and its shareholders; and

(iv) Timely, concise, and plain English disclosure is provided to investors about the fund's share cancellation practices and their effects on investors, including:

(A) Advance notification to investors in the fund's prospectus that the fund plans to use share cancellation in a negative interest rate event and the potential effects on investors; and

(B) When the fund is cancelling shares, information in each account statement or in a separate writing accompanying each account statement identifying that such practice is in use and explaining its effects on investors.

(d) * * *

(1) * * *

(ii) Maintain a dollar-weighted average portfolio maturity (''WAM'') that exceeds 60 calendar days, with the dollar-weighted average based on the percentage of each security's market value in the portfolio; or

(iii) Maintain a dollar-weighted average portfolio maturity that exceeds 120 calendar days, determined without reference to the exceptions in paragraph (i) of this section regarding interest rate readjustments (''WAL'') and with the dollar-weighted average based on the percentage of each security's market value in the portfolio.

* * * * *

(4) * * *

(ii) *Minimum daily liquidity requirement.* The money market fund may not acquire any security other than a daily liquid asset if, immediately after the acquisition, the fund would have invested less than twenty-five percent of its total assets in daily liquid assets. This provision does not apply to tax exempt funds.

(iii) *Minimum weekly liquidity requirement.* The money market fund may not acquire any security other than a weekly liquid asset if, immediately after the acquisition, the fund would have invested less than fifty percent of its total assets in weekly liquid assets.

* * * * *

(f) * * *

(4) *Notice to the board of directors.* (i) The money market fund must notify its board of directors within one business day following the occurrence of:

(A) The money market fund investing less than twelve and a half percent of its total assets in daily liquid assets; or

(B) The money market fund investing less than twenty-five percent of its total assets in weekly liquid assets.

(ii) Following an event described in paragraph (f)(4)(i) of this section, the money market fund must provide its board of directors with a brief description of the facts and circumstances leading to such event within four business days after occurrence of the event.

* * * * *

(h) * * *

(10) *Website disclosure of portfolio holdings and other fund information.* The money market fund must post prominently on its website the following information:

(i) * * *

(B) * * *

(*2*) Category of investment (indicate the category that identifies the instrument from among the following: U.S. Treasury Debt; U.S. Government Agency Debt, if categorized as coupon-paying notes; U.S. Government Agency Debt, if categorized as no-coupon discount notes; Non-U.S. Sovereign, Sub-Sovereign and Supra-National debt; Certificate of Deposit; Non-Negotiable Time Deposit; Variable Rate Demand Note; Other Municipal Security; Asset Backed Commercial Paper; Other Asset Backed Securities; U.S. Treasury Repurchase Agreement, if collateralized only by U.S. Treasuries (including Strips) and cash; U.S. Government Agency Repurchase Agreement, collateralized only by U.S. Government Agency securities, U.S. Treasuries, and cash; Other Repurchase Agreement, if any collateral falls outside Treasury, Government Agency and cash; Insurance Company Funding Agreement; Investment Company; Financial Company Commercial Paper; Non-Financial Company Commercial Paper; and Other Instrument. If Other Instrument, include a brief description);

* * * * *

(iii) A schedule, chart, graph, or other depiction showing the money market fund's net asset value per share (which the fund must calculate based on current market factors before applying the amortized cost or penny-rounding method, if used), rounded to the fourth decimal place in the case of funds with a $1.0000 share price or an equivalent level of accuracy for funds with a different share price (*e.g.,* $10.000 per share), as of the end of each business day during the preceding six months, which must be updated each business day as of the end of the preceding business day.

(iv) A link to a website of the Securities and Exchange Commission where a user may obtain the most recent 12 months of publicly available information filed by the money market fund pursuant to § 270.30b1–7.

(v) For a period of not less than one year, beginning no later than the same business day on which the money market fund files an initial report on Form N–CR (§ 274.222 of this chapter) in response to the occurrence of any event specified in Part C of Form N–CR, the same information that the money market fund is required to report to the Commission on Part C (Items C.1, C.2, C.3, C.4, C.5, C.6, and C.7) of Form N–CR concerning such event, along with the following statement: ''The Fund was required to disclose additional information about this event on Form N–CR and to file this form with the Securities and Exchange Commission. Any Form N–CR filing submitted by the Fund is available on the EDGAR Database on the Securities and Exchange Commission's internet site at *https://www.sec.gov.*''

* * * * *

(j) *Delegation.* The money market fund's board of directors may delegate to the fund's investment adviser or officers the responsibility to make any determination required to be made by the board of directors under this section other than the determinations required by paragraphs (c)(1) (board findings), (c)(3) (share cancellation), (f)(1) (adverse events), (g)(1) and (2) (amortized cost and penny rounding procedures), and (g)(8) (stress testing procedures) of this section.

(1) *Written guidelines.* The board of directors must establish and periodically review written guidelines

(including guidelines for determining whether securities present minimal credit risks as required in paragraphs (d)(2) and (g)(3) of this section and guidelines for determining the application and size of liquidity fees as required in paragraph (c)(2) of this section) and procedures under which the delegate makes such determinations.

(2) *Oversight.* The board of directors must take any measures reasonably necessary (through periodic reviews of fund investments and the delegate's procedures in connection with investment decisions, periodic review of the delegate's liquidity fee determinations under paragraph (c)(2) of this section, and prompt review of the adviser's actions in the event of the default of a security or event of insolvency with respect to the issuer of the security or any guarantee or demand feature to which it is subject that requires notification of the Commission under paragraph (f)(2) of this section by reference to Form N–CR (§ 274.222 of this chapter) to assure that the guidelines and procedures are being followed.

■ 3. Amend § 270.31a–2 by revising paragraph (a)(2) to read as follows:

§ 270.31a–2 Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

(a) * * *

(2) Preserve for a period not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, all books and records required to be made pursuant to § 270.31a–1(b)(5) through (12) and all vouchers, memoranda, correspondence, checkbooks, bank statements, cancelled checks, cash reconciliation, cancelled stock certificates, and all schedules evidencing and supporting each computation of net asset value of the investment company shares, including schedules evidencing and supporting each computation of an adjustment to net asset value of the investment company shares based on swing pricing policies and procedures established and implemented pursuant to § 270.22c–1(a)(3), all schedules evidencing and supporting each computation of a liquidity fee by a money market fund pursuant to § 270.2a–7(c)(2), and other documents required to be maintained by § 270.31a–1(a) and not enumerated in § 270.31a–1(b).

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 4. The general authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l,* 78m, 78n, 78*o*(d), 80a–8, 80a–24, 80a–26, 80a–29, and 80a–37 unless otherwise noted.

* * * * *

■ 5. Amend Form N–1A (referenced in §§ 239.15A and 274.11A) by:
■ a. Revising Item 4(b)(1)(ii);
■ b. Revising Item 16(g);
■ c. Removing instructions 2 and 3 to Item 16(g)(1); and
■ d. Revising Item 27A(i).

Note: Form N–1A is attached as Appendix A to this document. Form N–1A does not appear in the Code of Federal Regulations.

■ 6. Amend Form N–CSR (referenced in §§ 249.331 and 274.128) by:
■ a. Revising the header to the instruction to paragraph (a) and (b) of Item 7 to read ''Instructions to paragraphs (a) and (b)'';
■ b. Redesignating the current instruction to Item 7 as Instruction 1; and
■ c. Adding Instruction 2 to Item 7.

Note: Form N–CSR is attached in Appendix B to this document. Form N–CSR does not appear in the Code of Federal Regulations.

■ 7. Revise Form N–MFP (referenced in § 274.201).

Note: Form N–MFP is attached as Appendix C to this document. Form N–MFP does not appear in the Code of Federal Regulations.

■ 8. Amend Form N–CR (referenced in § 274.222) by:
■ a. Revising the General Instructions in Sections A, C, D, and F, and Parts A and C;
■ b. Removing Parts E, F, and G and replacing them with new Part E; and
■ c. Redesignating Part H to Part F.

Note: Form N–CR is attached as Appendix D to this document. Form N–CR does not appear in the Code of Federal Regulations.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

■ 9. The authority citation for part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.,* Pub. L. 111–203, 124 Stat. 1376.

■ 10. Amend Form PF (referenced in § 279.9) by revising section 3 and the Glossary of Terms.

Note: Form PF is attached as Appendix E to this document. Form PF does not appear in the Code of Federal Regulations.

By the Commission.

Dated: July 12, 2023.

Vanessa A. Countryman,

Secretary.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A—Form N–1A

Form N–1A

* * * * *

Item 4. Risk/Return Summary: Investments, Risks, and Performance

* * * * *

(b) * * *

(1) * * *

(ii)(A) If the Fund is a Money Market Fund that is not a government Money Market Fund, as defined in § 270.2a–7(a)(14) or a retail Money Market Fund, as defined in § 270.2a–7(a)(21), include the following statement:

You could lose money by investing in the Fund. Because the share price of the Fund will fluctuate, when you sell your shares they may be worth more or less than what you originally paid for them. The Fund may impose a fee upon sale of your shares. The Fund generally must impose a fee when net sales of Fund shares exceed certain levels. An investment in the Fund is not a bank account and is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor is not required to reimburse the Fund for losses, and you should not expect that the sponsor will provide financial support to the Fund at any time, including during periods of market stress.

(B) If the Fund is a Money Market Fund that is a government Money Market Fund, as defined in § 270.2a–7(a)(14), or a retail Money Market Fund, as defined in § 270.2a–7(a)(21), and that is subject to the requirements of § 270.2a–7(c)(2)(i) of this chapter or is not subject to the requirements of § 270.2a–7(c)(2)(i) pursuant to § 270.2a–7(c)(2)(i)(B) of this chapter, but has chosen to rely on the ability to impose liquidity fees consistent with the requirements of § 270.2a–7(c)(2)(i), include the following statement:

You could lose money by investing in the Fund. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it cannot guarantee it will do so. The Fund may impose a fee upon sale of your shares. An investment in the Fund is not a bank account and is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor is not required to reimburse the Fund for losses, and you should not expect that the sponsor will provide financial support to the Fund at any time, including during periods of market stress.

(C) If the Fund is a Money Market Fund that is a government Money Market Fund, as defined in § 270.2a–7(a)(14), that is not subject to the requirements of § 270.2a–

7(c)(2)(i) of this chapter pursuant to § 270.2a–7(c)(2)(i)(B) of this chapter, and that has not chosen to rely on the ability to impose liquidity fees consistent with the requirements of § 270.2a–7(c)(2)(i), include the following statement:

You could lose money by investing in the Fund. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it cannot guarantee it will do so. An investment in the Fund is not a bank account and is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor is not required to reimburse the Fund for losses, and you should not expect that the sponsor will provide financial support to the Fund at any time, including during periods of market stress.

Instruction. If an affiliated person, promoter, or principal underwriter of the Fund, or an affiliated person of such a person, has contractually committed to provide financial support to the Fund, and the term of the agreement will extend for at least one year following the effective date of the Fund's registration statement, the statement specified in Item 4(b)(1)(ii)(A), Item 4(b)(1)(ii)(B), or Item 4(b)(1)(ii)(C) may omit the last sentence (''The Fund's sponsor is not required to reimburse the Fund for losses, and you should not expect that the sponsor will provide financial support to the Fund at any time, including during periods of market stress.''). For purposes of this Instruction, the term ''financial support'' includes any capital contribution, purchase of a security from the Fund in reliance on § 270.17a–9, purchase of any defaulted or devalued security at par, execution of letter of credit or letter of indemnity, capital support agreement (whether or not the Fund ultimately received support), performance guarantee, or any other similar action reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio; however, the term ''financial support'' excludes any routine waiver of fees or reimbursement of fund expenses, routine inter-fund lending, routine inter-fund purchases of fund shares, or any action that would qualify as financial support as defined above, that the board of directors has otherwise determined not to be reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio.

* * * * *

Item 16. Description of the Fund and Its Investments and Risks

* * * * *

(g) *Money Market Fund Material Events.* If the Fund is a Money Market Fund disclose, as applicable, the following events:

(1) *Imposition of Liquidity Fees.* During the last 10 years, any occasion on which the Fund has imposed a liquidity fee pursuant to § 270.2a–7(c)(2).

Instructions

1. With respect to each such occasion, disclose: the dates the Fund imposed a liquidity fee pursuant to § 270.2a–7(c)(2) and the size of the liquidity fee imposed on each of those dates.

* * * * *

Item 27A. Annual and Semi-Annual Shareholder Report

* * * * *

(i) *Availability of Additional Information.* Provide a brief, plain English statement that certain additional Fund information is available on [the Fund's] website. Include plain English references to, as applicable, the Fund's prospectus, financial information, holdings, and proxy voting information, including the information described in Instructions 2 and 3 to Item 17(f) of Form N–1A. A Fund also may refer to other information available on this website, including the information described in Instruction 2 to paragraphs (a) and (b) of Item 7 of Form N–CSR, if it reasonably believes that shareholders likely would view the information as important.

Instructions

* * * * *

3. If a Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for the Fund's proxy voting record by phone or email, the Fund (or financial intermediary) must send the information disclosed in the Fund's most recently filed report on Form N–PX in a human-readable format, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

4. If a Fund has a website, it must make publicly available free of charge the information disclosed in the Fund's most recently filed report on Form N–PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Fund's most recently filed report on Form N–PX must be in a human-readable format and remain available on or through the Fund's website for as long as the Fund remains subject to the requirements of rule 30b1–4 (17 CFR 270.30b1–4). A Fund may satisfy the requirement to provide this information in a human-readable format by providing a direct link to the relevant HTML-rendered Form N–PX report on EDGAR.

* * * * *

Appendix B—Form N–CSR

FORM N–CSR

* * * * *

Item 7. Financial Statements and Financial Highlights for Open-End Management Investment Companies.

* * * * *

Instructions to paragraphs (a) and (b).

1. The financial statements and financial highlights filed under this Item must be audited and be accompanied by any associated accountant's report, as defined in rule 1–02(a) of Regulation S–X [17 CFR 210.1–02(a)], except that in the case of a report on this Form N–CSR as of the end of a fiscal half-year, the financial statements and financial highlights need not be audited.

2. In the case of a Money Market Fund, Schedule I—Investments in securities of unaffiliated issuers [17 CFR 210.12–12B] may be omitted from its financial statements, provided that: (a) the Fund states in the report that the Fund's complete schedule of investments in securities of unaffiliated issuers is available (i) without charge, upon request, by calling a specified toll-free telephone number; (ii) on the Fund's website, if applicable; and (iii) on the Commission's website at *http://www.sec.gov*; and (b) whenever the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for the Fund's schedule of investments in securities of unaffiliated issuers, the Fund (or financial intermediary) sends a copy of Schedule I—Investments in securities of unaffiliated issuers within 3 business days of receipt by first-class mail or other means designed to ensure equally prompt delivery.

* * * * *

Appendix C—Form N–MFP

BILLING CODE 8011–01–P

FORM N-MFP

MONTHLY SCHEDULE OF PORTFOLIO HOLDINGS OF MONEY MARKET FUNDS

(See instructions following the required items)
Intentional misstatements or omissions of fact constitute Federal and criminal violations.
See 18 U.S.C. 1001.

General Information

Item 1. Report for: _____
mm/dd/yyyy

Item 2. Name of Registrant: _____

Item 3. CIK Number of Registrant: _____

Item 4. LEI of Registrant: _____

Item 5. Name of Series: _____

Item 6. LEI of Series: _____

Item 7. EDGAR Series Identifier: _____

Item 8. Total number of share classes in the series: _____

Item 9. Do you anticipate that this will be the fund's final filing on Form N-MFP?

[ ] Yes [ ] No

If Yes, answer Items 9.a – 9.c.

a. Is the fund liquidating? [ ] Yes [ ] No

b. Is the fund merging with, or being acquired by, another fund? [ ] Yes [ ] No

c. If applicable, identify the successor fund by CIK, Securities Act file number, and EDGAR series identifier:

_____

Item 10. Has the fund acquired or merged with another fund since the last filing? [ ] Yes [ ] No

If Yes, answer Item 10.a.

a. Identify the acquired or merged fund by CIK, Securities Act file number, and

EDGAR series identifier: _____

Item 11. Provide the name, email address, and telephone number of the person authorized to receive information and respond to questions about this Form N-MFP:

Name _____

Email _____

Telephone _____

Part A. Series-Level Information about the Fund

Item A.1. Securities Act File Number. _____

Item A.2. Investment Adviser. _____

a. SEC file number of investment adviser. _____

Item A.3. Sub-Adviser. If a fund has one or more sub-advisers, disclose the name of each sub-adviser. _____

a. SEC file number of each sub-adviser. _____

Item A.4. Independent Public Accountant. _____

a. City and state of independent public accountant. _____

Item A.5. Administrator. If a fund has one or more administrators, disclose the name of each administrator. _____

Item A.6. Transfer Agent.

_____

a. CIK Number. _____

b. SEC file number of transfer agent. _____

Item A.7. Master-Feeder Funds. Is this a Feeder Fund? [ ] Yes [ ] No

If Yes, answer Items A.7.a – 7.c.

a. Identify the Master Fund by CIK or, if the fund does not have a CIK, by name.

_____

b. Securities Act file number of the Master Fund. _____

c. EDGAR series identifier of the Master Fund. _____

Item A.8. Master-Feeder Funds. Is this a Master Fund? [ ] Yes [ ] No

If Yes, answer Items A.8.a – 8.c.

a. Identify all Feeder Funds by CIK or, if the fund does not have a CIK, by name.

_____

b. Securities Act file number of each Feeder Fund. _____

c. EDGAR series identifier of each Feeder Fund. _____

Item A.9. Is this series primarily used to fund insurance company separate accounts?

[ ] Yes [ ] No

Item A.10. Category. Indicate the category that identifies the money market fund from among the following:

[ ] Government [ ] Prime

[ ] Single State [ ] Other Tax Exempt

a. Is this fund a Retail Money Market Fund? [ ] Yes [ ] No

b. If this is a Government Money Market Fund, does the fund typically invest at least 80% of the value of its assets in U.S. Treasury obligations or repurchase agreements collateralized by U.S. Treasury obligations? [ ] Yes [ ] No

Item A.11. Dollar-weighted average portfolio maturity ("WAM" as defined in rule 2a-7(d)(1)(ii)). _____

Item A.12. Dollar-weighted average life maturity ("WAL" as defined in rule 2a-7(d)(1)(iii)). Calculate WAL without reference to the exceptions in rule 2a-7(i) regarding interest rate readjustments. _____

Item A.13. Liquidity. Provide the following, as of the close of business on each business day of the month reported:

a. Total Value of Daily Liquid Assets to the nearest cent. _____

b. Total Value of Weekly Liquid Assets (including Daily Liquid Assets) to the nearest cent. _____

c. Percentage of Total Assets invested in Daily Liquid Assets. _____

d. Percentage of Total Assets invested in Weekly Liquid Assets (including Daily Liquid Assets). _____

e. Date. _____

Item A.14. Provide the following, to the nearest cent:

a. Cash. (*See General Instructions E.*) _____

b. Total Value of portfolio securities. (*See General Instructions E.*)

_____

i. If any portfolio securities are valued using amortized cost, the total value of the portfolio securities valued at amortized cost. _____

c. Total Value of other assets (excluding amounts provided in A.14.a–b.)

_____

Item A.15. Total value of liabilities, to the nearest cent. _____

Item A.16. Net assets of the series, to the nearest cent. _____

Item A.17. Number of shares outstanding, to the nearest hundredth. _____

Item A.18. Does the fund seek to maintain a stable price per share? [ ] Yes [ ] No

a. If yes, state the price the fund seeks to maintain. _____

Item A.19. 7-day gross yield. For each business day, based on the immediately preceding 7 business days, calculate the fund's yield by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one share at the beginning of the period and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by (365/7) with the resulting yield figure carried to at least the nearest hundredth of one percent. The 7-day gross yield should not reflect a deduction of shareholders fees and fund operating expenses. For master funds and feeder funds, report the 7-day gross yield at the master-fund level.

a. 7-day gross yield _____

b. Date _____

Item A.20. Net asset value per share. Provide the net asset value per share, calculated using available market quotations (or an appropriate substitute that reflects current market conditions) rounded to the fourth decimal place in the case of a fund with a $1.0000 share price (or an equivalent level of accuracy for funds with a different share price), as of the close of business on each business day of the month reported.

a. Net asset value per share_____

b. Date _____

Item A.21. Is the fund established as a cash management vehicle for affiliated funds or other accounts managed by related entities or their affiliates and not available to other investors? [ ] Yes [ ] No

Item A.22. Liquidity Fee. During the reporting period, did the fund apply any liquidity fees under rule 2a-7(c)(2)? [ ] Yes [ ] No

If Yes, answer Item A.22.a.

a. For each business day the fund applied a liquidity fee during the reporting period, provide:

i. The date on which the liquidity fee was applied: _____

ii. The type of liquidity fee:

☐ Mandatory liquidity fee, with the amount of the fee based on good faith estimates of liquidity costs under rule 2a-7(c)(2)(iii)(A)

☐ Mandatory liquidity fee, using the default amount under rule 2a-7(c)(2)(iii)(C)

☐ Discretionary liquidity fee under rule 2a-7(c)(2)(ii)

iii. The total dollar amount of the liquidity fee applied to redemptions: _____

iv. The amount of the liquidity fee as a percentage of the value of shares redeemed: _____

Part B: Class-Level Information about the Fund

For each Class of the Series (regardless of the number of shares outstanding in the Class), disclose the following:

Item B.1. Full name of the Class. _____

Item B.2. EDGAR Class identifier. _____

Item B.3. Minimum initial investment. _____

Item B.4. Net assets of the Class, to the nearest cent. _____

Item B.5. Number of shares outstanding, to the nearest hundredth. _____

Item B.6. Net asset value per share. Provide the net asset value per share, calculated using available market quotations (or an appropriate substitute that reflects current market conditions) rounded to the fourth decimal place in the case of a fund with a $1.0000 share price (or an equivalent level of accuracy for funds with a different share price), as of the close of business on each business day of the month reported.

a. Net asset value per share _____

b. Date _____

Item B.7. Shareholder flow. Provide (a) the daily gross subscriptions (including dividend reinvestments) and gross redemptions, rounded to the nearest cent, as of the close of business on each business day of the month reported; and (b) the total gross subscriptions (including dividend reinvestments) and total gross redemptions for the month reported. For purposes of this Item, report gross subscriptions (including dividend reinvestments) and gross redemptions as of the trade date, and for Master-Feeder Funds, only report the required shareholder flow data at the Feeder Fund level.

a. Daily shareholder flows:

i. Gross subscriptions (including dividend reinvestments) _____

ii. Gross redemptions _____

iii. Date _____

b. Monthly shareholder flows:

i. Total gross subscriptions (including dividend reinvestments) _____

ii. Total gross redemptions_____

Item B.8. 7-day net yield for each business day of the month reported, as calculated under Item 26(a)(1) of Form N-1A (§ 274.11A of this chapter) except based on the 7 business days immediately preceding a given business day.

a. 7-day net yield _____

b. Date _____

Item B.9. During the reporting period, did any person pay for or waive all or part of the fund's operating expenses or management fees? [ ] Yes [ ] No

If Yes, answer Item B.9.a.

a. Total amount of the expense payment or fee waiver, or both (reported in dollars). _____

Item B.10. For each person who owns of record or is known by the fund to own beneficially 5% or more of the shares outstanding in the Class, provide the following information. For purposes of this question, if the fund knows that two or more beneficial owners of the Class are affiliated with each other, treat them as a single beneficial owner when calculating the percentage ownership and identify separately each affiliated beneficial owner by type and the percentage interest of each affiliated beneficial owner. An affiliated beneficial owner is one that directly or indirectly controls or is controlled by another beneficial owner or is under common control with any other beneficial owner.

a. Type of beneficial owner or record owner:

☐ Retail investor

☐ Non-financial corporation

☐ Pension plan

☐ Non-profit

☐ State or municipal government entity (excluding governmental pension plans)

☐ Registered investment company

☐ Private fund

☐ Depository institution or other banking institution

☐ Sovereign wealth fund

☐ Broker-dealer

☐ Insurance company

☐ Other

If *Other*, provide a brief description of the type of investor included in this category. _____

b. Percent of shares outstanding in the Class owned of record ____

c. Percent of shares outstanding in the Class owned beneficially _____

Item B.11. Shareholder Composition. If the fund is not a Government Money Market Fund or Retail Money Market Fund, identify the percentage of investors within the following categories:

a. Non-financial corporations: _____

b. Pension plans: _____

c. Non-profits: _____

d. State or municipal government entities (excluding governmental pension plans): _____

e. Registered investment companies: _____

f. Private funds: _____

g. Depository institutions and other banking institutions: _____

h. Sovereign wealth funds: _____

i. Broker-dealers: _____

j. Insurance companies: _____

k. Other:_____

If *Other*, provide a brief description of the types of investors included in this category. _____

Item B.12. Share Cancellation. During the reporting period, were any shares cancelled under rule 2a-7(c)(3)? [ ] Yes [ ] No

If Yes, answer Item B.12.a.

a. For each business day shares were cancelled under rule 2a-7(c)(3) during the reporting period, provide:

i. Dollar value of shares cancelled _____

ii. Number of shares cancelled _____

iii. Date _____

Part C: Schedule of Portfolio Securities

For each security held by the money market fund, disclose the following information.

Item C.1. The name of the issuer or the name of the counterparty in a repurchase agreement.

_____

Item C.2. The title of the issue (including coupon, if applicable) _____

Item C.3. The CUSIP. _____

Item C.4. The LEI. _____

Item C.5. Other identifier. In addition to CUSIP and LEI, provide at least one of the following other identifiers, if available:

a. The ISIN; _____

b. The CIK;_____

c. The RSSD ID; _____ or

d. Other unique identifier. _____

Item C.6. The category of investment. Indicate the category that most closely identifies the instrument from among the following:

[ ] U.S. Treasury Debt

[ ] U.S. Government Agency Debt (*if categorized as coupon-paying notes)*

[ ] U.S. Government Agency Debt
(if categorized as no-coupon discount notes)

[ ] Non-U.S. Sovereign, Sub-Sovereign and Supra-National Debt

[ ] Certificate of Deposit

[ ] Non-Negotiable Time Deposit

[ ] Variable Rate Demand Note

[ ] Other Municipal Security

[ ] Asset Backed Commercial Paper

[ ] Other Asset Backed Securities

[ ] U.S. Treasury Repurchase Agreement
if collateralized only by U.S. Treasuries (including Strips) and cash Government

and cash

[ ] U.S. Government Agency Repurchase Agreement
collateralized only by U.S.

Agency securities, U.S. Treasuries,

[ ] Other Repurchase Agreement
if collateral falls outside Treasury, Government Agency, and cash

[ ] Insurance Company Funding Agreement

[ ] Investment Company

[ ] Financial Company Commercial Paper

[ ] Non-Financial Company Commercial Paper

[ ] Tender Option Bond

[ ] Other Instrument

If *Other Instrument,* include a brief description. _____

Item C.7. If the security is a repurchase agreement, is the fund treating the acquisition of the repurchase agreement as the acquisition of the underlying securities (i.e., collateral) for purposes of portfolio diversification under rule 2a-7?
[ ] Yes [ ] No

Item C.8. For all repurchase agreements, specify whether the repurchase agreement is "open" (i.e., the repurchase agreement has no specified end date and, by its terms, will be extended or "rolled" each business day (or at another specified period) unless the investor chooses to terminate it), and describe the securities subject to the repurchase agreement (i.e., collateral).

a. Is the repurchase agreement "open"? [ ] Yes [ ] No

b. Is the repurchase agreement centrally cleared? [ ] Yes [ ] No

If *Yes*, provide the name of the central clearing counterparty (CCP).

_____

c. Is the repurchase agreement settled on the triparty platform [ ]Yes [ ] No

d. The name of the collateral issuer. _____

e. LEI. _____

f. The CUSIP. _____

g. Maturity date. _____

h. Coupon or yield. _____

i. The principal amount, to the nearest cent. _____

j. Value of collateral, to the nearest cent. _____

k. The category of investment that most closely represents the collateral, selected from among the following:

[ ] Asset-Backed Securities

[ ] Agency Collateralized Mortgage Obligations

[ ] Agency Debentures and Agency Strips

[ ] Agency Mortgage-Backed Securities

[ ] Private Label Collateralized Mortgage Obligations

[ ] Corporate Debt Securities

[ ] Equities

[ ] Money Market

[ ] U.S. Treasuries (including strips)

[ ] Cash

[ ] Other Instrument. If *Other Instrument*, include a brief description, including, if applicable, whether it is a collateralized debt obligation, municipal debt, whole loan, or international debt.

_____

If multiple securities of an issuer are subject to the repurchase agreement, the securities may be aggregated, in which case disclose:

a. the total principal amount and value _____and

b. the range of maturity dates and interest rates. _____

Item C.9. Is the security an Eligible Security? [ ] Yes [ ] No

Item C.10. Security rating(s) considered. Provide each rating assigned by any NRSRO that the fund's board of directors (or its delegate) considered in determining that the security presents minimal credit risks (together with the name of the assigning NRSRO). If none, leave blank. _____

Item C.11. The maturity date determined by taking into account the maturity shortening provisions of rule 2a-7(i) (i.e., the maturity date used to calculate WAM under rule 2a-7(d)(1)(ii)).

_____
mm/dd/yyyy

Item C.12. The maturity date determined without reference to the exceptions in rule 2a-7(i) regarding interest rate readjustments (i.e., the maturity date used to calculate WAL under rule 2a-7(d)(1)(iii)).

_____
mm/dd/yyyy

Item C.13. The maturity date determined without reference to the maturity shortening provisions of rule 2a-7(i) (i.e., the ultimate legal maturity date on which, in accordance with the terms of the security without regard to any interest rate readjustment or demand feature, the principal amount must unconditionally be paid).

_____
mm/dd/yyyy

Item C.14. Does the security have a Demand Feature on which the fund is relying to determine the quality, maturity or liquidity of the security? [ ] Y [ ] N *If Yes, answer Items C.14.a – 14.e. Where applicable, provide the information required in Items C.14.b-14.e in the order that each Demand Feature issuer was reported in Item C.14.a.*

a. The identity of the Demand Feature issuer(s). _____

b. The amount (i.e., percentage) of fractional support provided by each Demand Feature issuer. _____

c. The period remaining until the principal amount of the security may be recovered through the Demand Feature. _____

d. Is the demand feature conditional? [ ] Yes [ ] No

e. Rating(s) considered. Provide each rating assigned to the demand feature(s) or demand feature provider(s) by any NRSRO that the board of directors (or its delegate) considered in evaluating the quality, maturity or liquidity of the security (together with the name of the assigning NRSRO). If none, leave blank.

_____

Item C.15. Does the security have a Guarantee (other than an unconditional letter of credit disclosed in item C.14 above) on which the fund is relying to determine the quality, maturity or liquidity of the security? [ ] Yes [ ] No *If Yes, answer Items C.15.a – 15.c. Where applicable, provide the information required in Item C.15.b – 15.c in the order that each Guarantor was reported in Item C.15.a.*

a. The identity of the Guarantor(s). _____

b. The amount (i.e., percentage) of fractional support provided by each Guarantor.

_____

c. Rating(s) considered. Provide each rating assigned to the guarantee(s) or guarantor(s) by any NRSRO that the board of directors (or its delegate) considered in evaluating the quality, maturity or liquidity of the security

(together with the name of the assigning NRSRO).

If none, leave blank. _____

Item C.16. Does the security have any enhancements, other than those identified in Items C.14 and C.15 above, on which the fund is relying to determine the quality, maturity or liquidity of the security?

[ ] Yes [ ] No *If Yes, answer Items C.16.a – 16.d. Where applicable, provide the information required in Items C.16.b – 16.d in the order that each enhancement provider was reported in Item C.16.a.*

a. The identity of the enhancement provider(s). _____

b. The type of enhancement(s). _____

c. The amount (i.e., percentage) of fractional support provided by each enhancement provider. _____

d. Rating(s) considered. Provide each rating assigned to the enhancement(s) or enhancement provider(s) by any NRSRO that the board of directors (or its delegate) considered in evaluating the quality, maturity or liquidity of the security (together with the name of the assigning NRSRO). If none, leave blank. _____

Item C.17. The yield of the security as of the reporting date. _____

Item C.18. The total Value of the fund's position in the security, to the nearest cent: (*See General Instruction E.*) _____

a. *Including* the value of any sponsor support: _____

b. *Excluding* the value of any sponsor support: _____

Item C.19. The percentage of the money market fund's net assets invested in the security, to the nearest hundredth of a percent. _____%

Item C.20. Is the security categorized at level 3 in the fair value hierarchy under U.S. Generally Accepted Accounting Principles (*ASC 820, Fair Value Measurement*)?

[ ] Yes [ ] No

Item C.21. Is the security a Daily Liquid Asset? [ ] Yes [ ] No

Item C.22. Is the security a Weekly Liquid Asset? [ ] Yes [ ] No

Item C.23. Is the security an Illiquid Security? [ ] Yes [ ] No

Item C.24. Explanatory notes. Disclose any other information that may be material to other disclosures related to the portfolio security. If none, leave blank.

Part D. Disposition of Portfolio Securities

Item D.1. Disclose the gross market value of portfolio securities the money market fund sold or disposed of during the reporting period by category of investment. Do not include portfolio securities that the fund held until maturity. A money market fund that is a Government Money Market Fund or a tax exempt fund, as defined in rule 2a-7(a)(23) [17 CFR 270.2a-7(a)(23)], is not required to respond to Part D.

a. U.S. Treasury Debt, to the nearest cent. _____

b. U.S. Government Agency Debt (if categorized as coupon-paying notes), to the nearest cent. _____

c. U.S. Government Agency Debt (if categorized as no-coupon discount notes), to the nearest cent. _____

d. Non-U.S. Sovereign, Sub-Sovereign and Supra-National Debt, to the nearest cent. _____

e. Certificate of Deposit, to the nearest cent. _____

f. Non-Negotiable Time Deposit, to the nearest cent. _____

g. Variable Rate Demand Note, to the nearest cent. _____

h. Other Municipal Security, to the nearest cent. _____

i. Asset Backed Commercial Paper, to the nearest cent. _____

j. Other Asset Backed Securities, to the nearest cent. _____

k. U.S. Treasury Repurchase Agreement (if collateralized only by U.S. Treasuries (including Strips) and cash), to the nearest cent. _____

l. U.S. Government Agency Repurchase Agreement (collateralized only by U.S. Government Agency securities, U.S. Treasuries, and cash), to the nearest cent. _____

m. Other Repurchase Agreement (if collateral falls outside Treasury, Government Agency, and cash), to the nearest cent. _____

n. Insurance Company Funding Agreement, to the nearest cent. _____

o. Investment Company, to the nearest cent. _____

p. Financial Company Commercial Paper, to the nearest cent. _____

q. Non-Financial Company Commercial Paper, to the nearest cent. _____

r. Tender Option Bond, to the nearest cent. _____

s. Other Instrument, to the nearest cent. _____

If *Other Instrument*, include a brief description _____

SIGNATURES

Pursuant to the requirements of the Investment Company Act of 1940, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

_____
(Registrant)

_____
mm/dd/yy

_____
(Signature)

_____ _____
Name Title

*Print name and title of the signing officer under his/her signature.

BILLING CODE 8011–01–C

Form N–MFP

Monthly Schedule of Portfolio Holdings of Money Market Funds

Form N–MFP is to be used by registered open-end management investment companies, or series thereof, that are regulated as money market funds pursuant to rule 2a–7 under the Investment Company Act of 1940 (''Act'') (17 CFR 270.2a–7) (''money market funds''), to file reports with the Commission pursuant to rule 30b1–7 under the Act (17 CFR 270.30b1–7). The Commission may use the information provided on Form N–MFP in its regulatory, disclosure review, inspection, and policymaking roles.

General Instructions

A. Rule as to Use of Form N–MFP

Form N–MFP is the public reporting form that is to be used for monthly reports of money market funds required by section 30(b) of the Act and rule 30b1–7 under the Act (17 CFR 270.30b1–7). A money market fund must report information about the fund and its portfolio holdings as of the last business day or any subsequent calendar day of the preceding month. The Form N–MFP must be filed with the Commission no later than the fifth business day of each month, but may be filed any time beginning on the first business day of the month. Each money market fund, or series of a money market fund, is required to file a separate form. If the money market fund does not have any classes, the fund must provide the information required by Part B for the series. A money market fund is not required to respond to an item that is wholly inapplicable. If an item requests information that is not applicable (for example, a company does not have an LEI), respond N/A.

A money market fund may file an amendment to a previously filed Form N–MFP at any time, including an amendment to correct a mistake or error in a previously filed form. A fund that files an amendment to a previously filed form must provide information in response to all items of Form N–MFP, regardless of why the amendment is filed.

B. Application of General Rules and Regulations

The General Rules and Regulations under the Act contain certain general requirements that are applicable to reporting on any form under the Act. These general requirements should be carefully read and observed in the preparation and filing of reports on this form, except that any provision in the form or in these instructions shall be controlling.

C. Filing of Form N–MFP

A money market fund must file Form N–MFP in accordance with rule 232.13 of Regulation S–T. Form N–MFP must be filed electronically using the Commission's EDGAR system.

D. Paperwork Reduction Act Information

A registrant is not required to respond to the collection of information contained in Form N–MFP unless the Form displays a currently valid Office of Management and Budget (''OMB'') control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

E. Definitions

References to sections and rules in this Form N–MFP are to the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Investment Company Act''), unless otherwise indicated. Terms used in this Form N–MFP have the same meaning as in the Investment Company Act or related rules, unless otherwise indicated.

As used in this Form N–MFP, the terms set out below have the following meanings:

''Cash'' means demand deposits in depository institutions and cash holdings in custodial accounts.

''Class'' means a class of shares issued by a Multiple Class Fund that represents interests in the same portfolio of securities under rule 18f–3 [17 CFR 270.18f–3] or under an order exempting the Multiple Class Fund from sections 18(f), 18(g), and 18(i) [15 U.S.C. 80a–18(f), 18(g), and 18(i)].

''Fund'' means the Registrant or a separate Series of the Registrant. When an item of Form N–MFP specifically applies to a Registrant or a Series, those terms will be used.

''Government Money Market Fund'' means a money market fund as defined in 17 CFR 270.2a–7(a)(14).

''LEI'' means, with respect to any company, the ''legal entity identifier'' assigned by or on behalf of an internationally recognized standards setting body and required for reporting purposes by the U.S. Department of the Treasury's Office of Financial Research or a financial regulator.

''Master-Feeder Fund'' means a two-tiered arrangement in which one or more Funds (or registered or unregistered pooled investment vehicles) (each a ''Feeder Fund'') holds shares of a single Fund (the ''Master Fund'') in accordance with section 12(d)(1)(E) [15 U.S.C. 80a–12(d)(1)(E)].

''Money Market Fund'' means a registered open-end management investment company, or series thereof, that is regulated as a money market fund pursuant to rule 2a–7 (17 CFR 270.2a–7) under the Investment Company Act of 1940.

''Retail Money Market Fund'' means a money market fund as defined in 17 CFR 270.2a–7(a)(21).

''RSSD ID'' means the identifier assigned by the National Information Center of the Board of Governors of the Federal Reserve System, if any.

''Securities Act'' means the Securities Act of 1933 [15 U.S.C. 77a–aa].

''Series'' means shares offered by a Registrant that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with rule 18f–2(a) [17 CFR 270.18f–2(a)].

''Value'' has the meaning defined in section 2(a)(41) of the Act (15 U.S.C. 80a–2(a)(41)).

Appendix D—Form N–CR

Form N–CR

* * * * *

General Instructions

A. Rule as to Use of Form N–CR

Form N–CR is the public reporting form that is to be used for current reports of money market funds required by section 30(b) of the Act and rule 30b1–8 under the Act. A money market fund must file a report on Form N–CR upon the occurrence of any one or more of the events specified in Parts B–F of this form. Unless otherwise specified, a report is to be filed within one business day after occurrence of the event. A report will be made public immediately upon filing. If the event occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the report is to be filed on the first business day thereafter.

* * * * *

C. Information To Be Included in Report Filed on Form N–CR

Upon the occurrence of any one or more of the events specified in Parts B–F of Form N–CR, a money market fund must file a report on Form N–CR that includes information in response to each of the items in Part A of the form, as well as each of the items in the applicable Parts B–F of the form.

D. Filing of Form N–CR

A money market fund must file Form N–CR in accordance with rule 232.13 of Regulation S–T. Reports on Form N–CR must be filed electronically using the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system in accordance with Regulation S–T. Consult the EDGAR Filer Manual and Appendices for EDGAR filing instructions.

* * * * *

F. Definitions

References to sections and rules in this Form N–CR are to the Investment Company Act (15 U.S.C. 80a), unless otherwise indicated. Terms used in this Form N–CR have the same meaning as in the Investment Company Act or rule 2a–7 under the Investment Company Act, unless otherwise indicated.

In addition, the following definitions apply:

''Fund'' means the registrant or a separate series of the registrant.

''LEI'' means, with respect to any company, the ''legal entity identifier'' as assigned by a utility endorsed by the Global LEI Regulatory Oversight Committee or accredited by the Global LEI Foundation.

''Registrant'' means the investment company filing this report or on whose behalf the report is filed.

''Series'' means shares offered by a Registrant that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with rule 18f–2(a) (17 CFR 270.18f–2(a)).

* * * * *

Part A: General Information

* * * * *

Item A.2 Name of registrant.
Item A.3 CIK Number of registrant.
Item A.4 LEI of registrant.
Item A.5 Name of series.
Item A.6 EDGAR Series Identifier.
Item A.7 LEI of series.
Item A.8 Securities Act File Number.
Item A.9 Provide the name, email address, and telephone number of the person authorized to receive information and respond to questions about this Form N–CR.

* * * * *

Part C: Provision of Financial Support to Fund

* * * * *

Item C.6 Security supported (if applicable). Disclose the name of the issuer, the title of the issue (including coupon or yield, if applicable), at least two identifiers,

if available (*e.g.,* CUSIP, ISIN, CIK, LEI), and the date the fund acquired the security.

* * * * *

Part E: Liquidity Threshold Event

If a fund has invested less than: (i) 25% of its total assets in weekly liquid assets or (ii) 12.5% of its total assets in daily liquid assets, disclose the following information:

Item E.1 Initial date on which the fund invested less than 25% of its total assets in weekly liquid assets, if applicable.

Item E.2 Initial date on which the fund invested less than 12.5% of its total assets in daily liquid assets, if applicable.

Item E.3 Percentage of the fund's total assets invested in both weekly liquid assets and daily liquid assets as of any dates reported in Items E.1 or E.2.

Item E.4 Brief description of the facts and circumstances leading to the fund investing less than 25% of its total assets in weekly liquid assets or less than 12.5% of its total assets in daily liquid assets, as applicable.

Instruction. A report responding to Items E.1, E.2, and E.3 is to be filed within one business day after occurrence of an event contemplated in this Part E. An amended report responding to Item E.4 is to be filed within four business days after occurrence of an event contemplated in this Part E.

Part F: Optional Disclosure

If a fund chooses, at its option, to disclose any other events or information not otherwise required by this form, it may do so under this Item F.1.

Item F.1 Optional disclosure.

Instruction. Item F.1 is intended to provide a fund with additional flexibility, if it so chooses, to disclose any other events or information not otherwise required by this form, or to supplement or clarify any of the disclosures required elsewhere in this form. Part F does not impose on funds any affirmative obligation. A fund may file a report on Form N–CR responding to Part F at any time.

* * * * *

Appendix E–Form PF

BILLING CODE 8011–01–P

Form PF

* * * * *

Section 3: Information about *liquidity funds* that you advise.

You must complete a separate Section 3 for each *liquidity fund* that you advise. However, with respect to *master-feeder arrangements* and *parallel fund structures*, you may report collectively or separately about the component funds as provided in the General Instructions.

Item A. *Reporting fund* identifying and operational information

51. (a) Name of the *reporting fund* .....

(b) *Private fund* identification number of the *reporting fund* .....

52. (a) Does the *reporting fund* seek to maintain a stable price per share?

☐ Yes ☐ No

(b) If yes, state the price the *reporting fund* seeks to maintain.....

Item B. *Reporting fund* assets

53. Provide the following information for each month of the *reporting period.*

	1st Month	2nd Month	3rd Month
(a) Net asset value of *reporting fund* as reported to current and prospective investors			
(b) Net asset value per share of *reporting fund* as reported to current and prospective investors *(to the nearest hundredth of a cent)*			
(c) Net asset value per share of *reporting fund (to the nearest hundredth of a cent; exclude the value of any capital support agreement or similar arrangement)*			
(d) *WAM* of *reporting fund (in days)*			
(e) *WAL* of *reporting fund (in days)*			
(f) *7-day gross yield* of *reporting fund (to the nearest hundredth of one percent*			

(g) Dollar amount of the *reporting fund's* assets that are *daily liquid assets*			
(h) Dollar amount of the *reporting fund's* assets that are *weekly liquid assets*			
(i) Dollar amount of the *reporting fund's* assets that have a *maturity* greater than 397 days			
(j) Amount of cash held by the *reporting fund*			
(k) Total gross subscriptions (including dividend reinvestments)			
(l) Total gross redemptions			

Item C. Financing information

54. (a) Is the amount of total *borrowing* reported in response to Question 12 equal to or greater than 5% of the *reporting fund's net asset value*?

☐ Yes ☐ No

(b) If you responded "yes" to Question 54(a) above, divide the dollar amount of total *borrowing* reported in response to Question 12 among the periods specified below depending on the type of *borrowing*, the type of creditor and the latest date on which the reporting fund may repay the principal amount of the *borrowing* without defaulting or incurring penalties or additional fees.

(If a creditor (or syndicate or administrative/collateral agent) is permitted to vary unilaterally the economic terms of the financing or to revalue posted collateral in its own discretion and demand additional collateral, then the borrowing *should be deemed to have a maturity of 1 day or less for purposes of this question. For amortizing loans, each amortization payment should be treated separately and grouped with other* borrowings *based on its payment date.)*

(The total amount of borrowings *reported below should equal approximately the total amount of* borrowing *reported in response to Question 12.)*

	1 day or less	**2 days to 7 days**	**8 days to 30 days**	**31 days to 397 days**	**Greater than 397 days**
(i) *Unsecured borrowing*					
(A) *U.S. depository institutions*					
(B) U.S. creditors that are not *U.S. depository institutions*					
(C) Non-U.S. creditors					
(ii) *Secured borrowing*					
(A) *U.S. depository institutions*					

(B) U.S. creditors that are not *U.S. depository institutions*					
(C) Non-U.S. creditors					

55. (a) Does the *reporting fund* have in place one or more committed liquidity facilities?

☐ Yes ☐ No

(b) If you responded "yes" to Question 55(a), provide the aggregate dollar amount of commitments under the liquidity facilities

Item D. Investor information

56. Specify the number of outstanding shares or units of the *reporting fund's* stock or similar securities.

57. Is the *reporting fund* established as a cash management vehicle for other funds or accounts that you or your *affiliates* manage that are not cash management vehicles?

☐ Yes ☐ No

58. Provide the following information regarding investor concentration.

(For purposes of this question, if you know that two or more beneficial owners of the reporting fund *are* affiliated *with each other, you should treat them as a single beneficial owner.)*

(a) Specify the percentage of the *reporting fund's* equity that is beneficially owned by the beneficial owner having the largest equity interest in the *reporting fund.*

(b) For each investor that beneficially owns 5% or more of the reporting fund's equity, provide the following information. If you select "other" as an investor category, describe the investor in Question 4.

(i) Investor Category	**(ii) Investor's percent of equity of the *reporting fund* on the *data reporting date***
[Drop-down menu of investor categories in Question 16]	
[Drop-down menu of investor categories in Question 16]	
Et cetera.	

59. Provide a good faith estimate, as of the *data reporting date*, of the percentage of the *reporting fund's* outstanding equity that was purchased using *securities lending collateral.*

60. Provide the following information regarding the restrictions on withdrawals and redemptions by investors in the *reporting fund*.

(For Questions 60 and 61, please note that the standards for imposing suspensions and restrictions on withdrawals/redemptions may vary among funds. Make a good faith determination of the provisions that would likely be triggered during conditions that you view as significant market stress.)

As of the *data reporting date*, what percentage of the *reporting fund's net asset value*, if any:

(a) May be subjected to a suspension of investor withdrawals/redemptions by an adviser or fund governing body *(this question relates to an adviser's or governing body's right to suspend and not just whether a suspension is currently effective).*	
(b) May be subjected to material restrictions on investor withdrawals/ redemptions (e.g., "gates") by an adviser or fund governing body *(this question relates to an adviser's or governing body's right to impose a restriction and not just whether a restriction been imposed).*	
(c) Is subject to a suspension of investor withdrawals/redemptions *(this question relates to whether a suspension is currently effective and not just an adviser's or governing body's right to suspend).*	
(d) Is subject to a material restriction on investor withdrawals/redemptions (e.g., a "gate") *(this question relates to whether a restriction has been imposed and not just an adviser's or governing body's right to impose a restriction).*	

61. Investor liquidity (as a % of *net asset value*):

(Divide the reporting fund's net asset value *among the periods specified below depending on the shortest period within which investors are entitled, under the fund documents, to withdraw invested funds or receive redemption payments, as applicable. Assume that you would impose gates where applicable but that you would not completely suspend withdrawals/redemptions and that there are no redemption fees. Please base on the notice period before the valuation date rather than the date proceeds would be paid to investors. The total should add up to 100%.)*

	% of NAV locked for
1 day or less	
2 days – 7 days	
8 days – 30 days	

31 days – 90 days	
91 days – 180 days	
181 days – 365 days	
Longer than 365 days	

Item E. Portfolio Information

62. For each security held by the *reporting fund*, provide the following information for each month of the *reporting period*.

(a) Name of the issue or the name of counterparty in a *repo*.....

(b) Title of the issue (including coupon, if applicable).....

(c) CUSIP.....

(d) *LEI*, if any.....

(e) In addition to CUSIP and *LEI*, provide at least one of the following other identifiers, if any:

(i) ISIN.....

(ii) CIK.....

(iii) Other unique identifier (indicate identifier and type of identifier)...

(f) The category of investment that most closely identifies the instrument

(Select from among the following categories of investment: U.S. Treasury Debt; U.S. Government Agency Debt (if categorized as coupon-paying notes); U.S. Government Agency Debt (if categorized as no-coupon-discount notes); Non-U.S. Sovereign, Sub-Sovereign and Supra-National debt; Certificate of Deposit; Non-Negotiable Time Deposit; Variable Rate Demand Note; Other Municipal Security; Asset Backed Commercial Paper; Other Asset Backed Securities; U.S. Treasury Repo Agreement, if collateralized only by U.S. Treasuries (including Strips) and cash; U.S. Government Agency Repo Agreement, collateralized only by U.S. Government Agency securities, U.S. Treasuries, and cash; Other Repo Agreement, if any collateral falls outside Treasury, Government Agency and cash; Insurance Company Funding Agreement; Investment Company; Financial Company Commercial Paper; Non-Financial Company Commercial Paper; Tender Option Bond; or Other Instrument. If Other Instrument, include a brief description.)

(g) For repos, specify whether the repo is "open" (*i.e.*, the repo has no specified end date and, by its terms, will be extended or "rolled" each business day (or at another specified period) unless the investor chooses to terminate it), and provide the following

information about the securities subject to the repo (*i.e.*, the collateral):

(If multiple securities of an issuer are subject to the repo, the securities may be aggregated, in which case provide: (i) the total principal amount and value and (ii) the range of maturity dates and interest rates.)

(i) Is the *repo* "open?" ☐ Yes ☐ No

(ii) Is the *repo* centrally cleared? ☐ Yes ☐ No

(iii) If the *repo* is centrally cleared, identify the CCP.....

(iv) Is the *repo* settled on a tri-party platform? ☐ Yes ☐ No

(v) Name of the collateral issuer .....

(vi) CUSIP.....

(vii) *LEI*, if any .....

(viii) Maturity date .....

(ix) Coupon or yield .....

(x) The principal amount, to the nearest cent.....

(xi) Value of the collateral, to the nearest cent.....

(xii) The category of investment that most closely represents the collateral .....

(Select from among the following categories for the collateral: Asset-Backed Securities; Agency Collateralized Mortgage Obligations; Agency Debentures and Agency Strips; Agency Mortgage-Backed Securities; Private Label Collateralized Mortgage Obligations; Corporate Debt Securities; Equities; Money Market; U.S. Treasuries (including strips); Cash; Other Instrument. If Other Instrument, include a brief description, including, if applicable, whether it is a collateralized debt obligation, municipal debt, whole loan, or international debt).

(h) If the rating assigned by a *credit rating agency* played a substantial role in the *reporting fund's* (or its adviser's) evaluation of the quality, maturity or liquidity of the security, provide the name of each *credit rating agency* and the rating each assigned to the security.

(i) The maturity date used to calculate *WAM* .....

(j) The maturity date used to calculate *WAL* .....

(k) The ultimate legal maturity date (*i.e.*, the date on which, in accordance with the terms of the security without regard to any interest rate readjustment or *demand feature*, the principal amount must unconditionally be paid).....

(l) If the security has a *demand feature* on which the *reporting fund* (or its adviser) is relying when evaluating the quality,

maturity, or liquidity of the security, provide the following information:

(If the security does not have such a demand feature*, enter "NA.")*

(i) Identity of the *demand feature* issuer(s) .....

(ii) If the rating assigned by a *credit rating agency* played a substantial role in the *reporting fund's* (or its adviser's) evaluation of the quality, maturity or liquidity of the *demand feature*, its issuer, or the security to which it relates, provide the name of each *credit rating agency* and the rating assigned by each *credit rating agency* .....

(iii) The period remaining until the principal amount of the security may be recovered through the *demand feature* .....

(iv) The amount (*i.e.*, percentage) of fractional support provided by each *demand feature* issuer.....

(v) Whether the *demand feature* is a *conditional demand feature*.....

(m) If the security has a *guarantee* (other than an unconditional letter of credit reported in response to Question 62(l) above) on which the *reporting fund* (or its adviser) is relying when evaluating the quality, maturity, or liquidity of the security, provide the following information:

(If the security does not have such a guarantee*, enter "NA.")*

(i) Identity of the *guarantor(s)* .....

(ii) If the rating assigned by a *credit rating agency* played a substantial role in the *reporting fund's* (or its adviser's) evaluation of the quality, maturity or liquidity of the *guarantee*, the *guarantor*, or the security to which the *guarantee* relates, provide the name of each *credit rating agency* and the rating assigned by each *credit rating agency*.....

(iii) The amount (*i.e.*, percentage) of fractional support provided by each *guarantor*.....

(n) If the security has any enhancements, other than those identified in response to Questions 62(l) and (m) above, on which the *reporting fund* (or its adviser) is relying when evaluating the quality, maturity, or liquidity of the security, provide the following information:

(If the security does not have such an enhancement, enter "NA.")

(i) Identity of the enhancement provider(s) .....

(ii) The type of enhancement(s) .....

(iii) If the rating assigned by a *credit rating agency* played a substantial role in the *reporting fund's* (or its adviser's) evaluation of the quality, maturity or liquidity of the enhancement, its provider, or the security to which it relates, provide the name of each *credit rating agency*

used and the rating assigned by the credit rating agency.....

(iv) The amount (*i.e.*, percentage) of fractional support provided by each enhancement provider .....

(o) The yield of the security as of the reporting date:.....

(p) The total *value* of the *reporting fund's* position in the security, and separately, if the *reporting fund* uses the amortized cost method of valuation, the amortized cost value, in both cases to the nearest cent:

(i) Including the value of any sponsor support.....

(ii) Excluding the value of any sponsor support.....

(q) The percentage of the *reporting fund's* net assets invested in the security, to the nearest hundredth of a percent.....

(r) Is the security categorized as a level 3 asset or liability in Question 14?.....

(s) Is the security a *daily liquid asset*?.....

(t) Is the security a *weekly liquid asset*?.....

(u) Is the security an *illiquid security*?.....

(v) Explanatory notes. Disclose any other information that may be material to other disclosures related to the portfolio security. *(If none, leave blank.)*

Item F. Disposition of Portfolio Securities

63. Disclose the gross market value (to the nearest cent) of portfolio securities the *reporting fund* sold or disposed of during each month of the *reporting period* by category of investment. Do not include portfolio securities that the fund held until maturity.

Category of Investment	**First Month**	**Second Month**	**Third Month**
[Drop-down menu of the category of investment]			
[Drop-down menu of the category of investment]			
[Drop-down menu of the category of investment]			

Category of Investment*: U.S. Treasury Debt; U.S. Government Agency Debt (if categorized as coupon-paying notes); U.S. Government Agency Debt (if categorized as no-coupon-discount notes); Non-U.S. Sovereign, Sub-Sovereign and Supra-National debt; Certificate of Deposit; Non-Negotiable Time Deposit; Variable Rate Demand Note; Other Municipal Security; Asset Backed Commercial Paper; Other Asset Backed Securities; U.S. Treasury Repo, if collateralized*

only by U.S. Treasuries (including Strips) and cash; U.S. Government Agency Repo, collateralized only by U.S. Government Agency securities, U.S. Treasuries, and cash; Other Repo, if any collateral falls outside Treasury, Government Agency and cash; Insurance Company Funding Agreement; Investment Company; Financial Company Commercial Paper; Non-Financial Company Commercial Paper; Tender Option Bond; or Other Instrument. If Other Instrument, include a brief description.

Item G. Parallel Money Market Funds

64. If the *reporting fund* pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as a *money market fund* advised by you or any of your *related persons*, provide the *money market fund's* EDGAR series identifier. *(If neither you nor any of your* related persons *advise such a* money market fund*, enter "NA.")*

* * * * *

GLOSSARY OF TERMS

* * *

WAL	Weighted average portfolio life of a *liquidity fund* calculated taking into account the maturity shortening provisions contained in paragraph (i) of *rule 2a-7*, but determined without reference to the exceptions in paragraph (i) of *rule 2a-7* regarding interest rate readjustments, with the dollar-weighted average based on the percentage of each security's market value in the portfolio.
WAM	Weighted average portfolio maturity of a *liquidity fund* calculated taking into account the maturity shortening provisions contained in paragraph (i) of *rule 2a-7* with the dollar-weighted average based on the percentage of each security's market value in the portfolio.
Weekly liquid assets	Has the meaning provided in *rule 2a-7*. Include *daily liquid assets*. As a result, the value of *weekly liquid assets* should equal or exceed the value of *daily liquid assets*.

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FEDERAL REGISTER

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Part III

Department of the Treasury

Internal Revenue Service

26 CFR Part 54

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2590

Department of Health and Human Services

45 CFR Parts 146 and 147

Requirements Related to the Mental Health Parity and Addiction Equity Act; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG–120727–21]

RIN 1545–BQ29

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AC11

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 146 and 147

[CMS–9902–P]

RIN 0938–AU93

Requirements Related to the Mental Health Parity and Addiction Equity Act

AGENCY: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Proposed rules.

SUMMARY: This document proposes amendments to regulations implementing the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) and proposes new regulations implementing the nonquantitative treatment limitation (NQTL) comparative analyses requirements under MHPAEA, as amended by the Consolidated Appropriations Act, 2021 (CAA, 2021). Specifically, these proposed rules would amend the existing NQTL standard to prevent plans and issuers from using NQTLs to place greater limits on access to mental health and substance use disorder benefits as compared to medical/surgical benefits. As part of these changes, these proposed rules would require plans and issuers to collect and evaluate relevant data in a manner reasonably designed to assess the impact of NQTLs on access to mental health and substance use disorder benefits and medical/surgical benefits, and would set forth a special rule with regard to network composition. These proposed rules would also amend existing examples and add new examples on the application of the rules for NQTLs to clarify and illustrate the protections of MHPAEA. Additionally, these proposed rules would set forth the content requirements for NQTL comparative analyses and specify how plans and issuers must make these comparative analyses available to the Department of the Treasury (Treasury), the Department of Labor (DOL), and the Department of Health and Human Services (HHS) (collectively, the Departments), as well as to an applicable State authority, and participants, beneficiaries, and enrollees. The Departments also solicit comments on whether there are ways to improve the coverage of mental health and substance use disorder benefits through other provisions of Federal law. Finally, HHS proposes regulatory amendments to implement the sunset provision for self-funded, non-Federal governmental plan elections to opt out of compliance with MHPAEA, as adopted in the Consolidated Appropriations Act, 2023 (CAA, 2023).

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than October 2, 2023.

ADDRESSES: Written comments may be submitted to the address specified below. Any comment that is submitted will be shared with Treasury, Internal Revenue Service (IRS), and HHS. Please do not submit duplicates.

Comments will be made available to the public. Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are posted on the internet exactly as received and can be retrieved by most internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously.

In commenting, please refer to file code 1210–AC11. Because of staff and resource limitations, the Departments cannot accept comments by facsimile (FAX) transmission.

Comments must be submitted in one of the following two ways (please choose only one of the ways listed):

1. Electronically. You may submit electronic comments on this regulation to *https://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. By mail. You may mail written comments to the following address ONLY: Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N–5653, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, *Attention:* 1210–AC11.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. The comments are posted on the following website as soon as possible after they have been received: *https://www.regulations.gov.* Follow the search instructions on that website to view public comments.

FOR FURTHER INFORMATION CONTACT: Shira McKinlay, Internal Revenue Service, Department of the Treasury, at 202–317–5500; Beth Baum or David Sydlik, Employee Benefits Security Administration, Department of Labor, at 202–693–8335; David Mlawsky, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at 410–786–6851.

Customer Service Information: Individuals interested in obtaining information from DOL concerning private employment-based health coverage laws may call the Employee Benefits Security Administration (EBSA) Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the DOL's website (*www.dol.gov/agencies/ebsa*).

In addition, information from HHS on private health insurance coverage and coverage provided by self-funded, non-Federal governmental group health plans can be found on the Centers for Medicare & Medicaid Services (CMS) website (*www.cms.gov/cciio*), and information on health care reform can be found at *www.Healthcare.gov* or *https://www.hhs.gov/healthcare/index.html.* In addition, information about mental and behavioral health and addiction is available at *https://www.samhsa.gov/mental-health* and *https://www.samhsa.gov/find-support.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

Mental health is essential to personal and societal wellbeing. America is experiencing a mental health and substance use disorder crisis [1] that worsened during the COVID–19

[1] Department of Health and Human Services (2023). SAMHSA Announces National Survey on Drug Use and Health (NSDUH) Results Detailing Mental Illness and Substance Use Levels in 2021. Retrieved from *https://www.hhs.gov/about/news/2023/01/04/samhsa-announces-national-survey-drug-use-health-results-detailing-mental-illness-substance-use-levels-2021.html.*

pandemic.[2] This crisis impacts both children and adults across various demographics nationwide and disproportionately affects marginalized and underserved communities. Recent data from the Centers for Disease Control and Prevention (CDC) indicate that, between August 2020 and February 2021, the percentage of adults exhibiting symptoms of an anxiety or depressive disorder increased significantly, from 36.4 percent to 41.5 percent.[3]

Similarly, the overdose and substance use disorder epidemic has worsened in recent years. Overdose death numbers have risen substantially since 2015, reaching a then-historic high of 70,630 deaths nationally in 2019 and growing to a reported value of 107,421 overdose deaths in the 12-month period ending in July 2022.[4] Additionally, from 1999 through 2019, the rate of drug overdose deaths increased from 4.0 per 100,000 to 19.6 in rural counties,[5] and in 2020, the age-adjusted rate of drug overdose deaths increased to 26.2 per 100,000 in rural counties.[6] The number of people who died from drug overdoses in 2021 increased by approximately 36,000 over the prior 2 years.[7] During the first year of the COVID–19 pandemic, the overdose death rates were highest for American Indians and Alaska Natives and Black or African Americans, exceeding the overdose death rate for White people by about 30 and 16 percent, respectively.[8] While Hispanic and Latino people saw the lowest overdose death rates, those rates still increased in 2020.[9]

As noted above, both children and adolescents are also impacted by this mental health and substance use disorder crisis. Prior to the COVID–19 public health emergency (PHE), millions of children ages 12 to 17 reported experiencing at least one major depressive episode or severe major depression.[10] Suicidal behavior among children has increased sharply; known suicide attempts by ingestion alone in children ages 10 to 12 increased by about 450 percent from 2010 to 2020.[11] Suicide rates among Black or African American children below age 13 increased rapidly from 2001 to 2015, and those children are nearly twice as likely to die by suicide than White children of the same age.[12] Additionally, one survey, conducted from September 20 to December 31, 2021, notes that 45 percent of Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) youth respondents ages 13 to 24 seriously considered attempting suicide in the past year,[13] including nearly half of multiracial LGBTQ youth respondents.[14] A sharp rise in eating disorders throughout the COVID–19 PHE also demonstrates the extent of this crisis for young people.[15] Emergency department visits for adolescent girls ages 12–17 with eating disorders doubled in January 2022 as compared to 2019,[16] and children are beginning to experience eating disorders at younger ages.[17] In addition, in 2021, nearly 3 in 5 teen girls felt persistently sad or hopeless, the highest level reported over the past decade.[18]

Americans are too frequently discouraged from and forgo seeking mental health and substance use disorders care because of barriers, both inside and outside of the health care system, such as discrimination, stigmatization,[19] inability to find an in-network provider accepting new patients,[20] cost, and geography. These barriers are particularly problematic for young adults ages 18–34, who are less likely to believe their mental health symptoms are well-managed than older adults,[21] and for people seeking substance use disorder treatment.[22] One survey reports that less than seven percent of people in need of substance use disorder treatment received care at a specialty facility and less than 10 percent received ''any treatment,'' [23]

[2] Vahratian, A., Blumberg, S.J., Terlizzi, E.P., Schiller, J.S. (2021). Symptoms of Anxiety or Depressive Disorder and Use of Mental Health Care Among Adults During the COVID–19 Pandemic—United States, August 2020–February 2021. MMWR Morb Mortal Wkly Rep 2021;70:490–494. DOI: *http://dx.doi.org/10.15585/mmwr.mm7013e2.*

[3] *Id.*

[4] Hedegaard, H., Miniño, A.M., Wagner, M. (2020). Drug Overdose Deaths in the United States, 1999–2019. NCHS Data Brief No. 304 (December 2020) *https://www.cdc.gov/nchs/data/databriefs/db394-H.pdf;* Centers for Disease Control and Prevention, National Center for Health Statistics. Vital Statistics Rapid Release: Provisional Drug Overdose Death Counts. Available at *https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm.* Accessed on July 14, 2023.

[5] Hedegaard H, Spencer MR. Urban–rural differences in drug overdose death rates, 1999–2019. NCHS Data Brief, no 403. Hyattsville, MD: National Center for Health Statistics. 2021. DOI: *https://dx.doi.org/10.15620/cdc:102891.*

[6] Spencer MR, Garnett MF, Miniño AM. Urban–rural differences in drug overdose death rates, 2020. NCHS Data Brief, no 440. Hyattsville, MD: National Center for Health Statistics. 2022. DOI: *https://dx.doi.org/10.15620/cdc:118601.*

[7] National Vital Statistics System. Provisional Drug Overdose Death Counts. *https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2022/202205.htm.*

[8] Friedman, Joseph R, and Helena Hansen (2022). Research Letter: Evaluation of Increases in Drug Overdose Mortality Rates in the US by Race and Ethnicity Before and During the COVID–19 Pandemic. JAMA Psychiatry. *https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2789697?utm_campaign=articlePDF&utm_medium=articlePDFlink&utm_source=articlePDF&utm_content=jamapsychiatry.2022.0004.*

[9] *Id.*

[10] Mental Health America (2022). Youth Ranking 2022. *https://mhanational.org/issues/2022/mental-health-america-youth-data.*

[11] Sheridan D, Grusing S, Marshall R. (2022) Changes in Suicidal Ingestion Among Preadolescent Children from 2000 to 2020. JAMA Pediatrics. *https://jamanetwork.com/journals/jamapediatrics/article-abstract/2789948; see also* CDC, Youth Risk Behavior Survey, available at *https://www.cdc.gov/healthyyouth/data/yrbs/pdf/YRBS_Data-Summary-Trends_Report2023_508.pdf.*

[12] Bridge JA, Horowitz LM, Fontanella CA, et al. (2018). Age-Related Racial Disparity in Suicide Rates Among US Youths From 2001 Through 2015. JAMA Pediatrics. *https://jamanetwork.com/journals/jamapediatrics/fullarticle/2680952.*

[13] The Trevor Project (2022). 2022 National Survey on LGBTQ Youth Mental Health. *https://www.thetrevorproject.org/survey-2022/.*

[14] The Trevor Project (2022). The Mental Health and Well-Being of Multiracial LGBTQ Youth. *https://www.thetrevorproject.org/research-briefs/the-mental-health-and-well-being-of-multiracial-lgbtq-youth-aug-2022/.*

[15] Radhakrishnan L, Leeb R, Bitsko R, Carey K, Gates A, Holland K, Hartnett K, Kite-Powell A, DeVies J, Smith A, van Santen K, Crossen S, Sheppard M, Wotiz S, Lane R, Njai R, Johnson A, Winn A, Kirking H, Rodgers L, Thomas C, Soetebier K, Adjemian J, Anderson K. (2022) Pediatric Emergency Department Visits Associated with Mental Health Conditions Before and During the COVID–19 Pandemic—United States, January 2019–January 2022. MMWR Morb Mortal Wkly Rep 2022; 71(8);319–324. *https://www.cdc.gov/mmwr/volumes/71/wr/mm7108e2.htm.*

[16] *Id.*

[17] Stuart B. Murray, Aaron J. Blashill, and Jerel P. Calzo (2022). Prevalence of Disordered Eating and Associations With Sex, Pubertal Maturation, and Weight in Children in the US, available at *https://jamanetwork.com/journals/jamapediatrics/article-abstract/2794847.*

[18] Centers for Disease Control and Prevention, National Center for HIV, Viral Hepatitis, STD, and TB Prevention, U.S. Teen Girls Experiencing Increased Sadness and Violence (Feb. 13, 2023), available at *https://www.cdc.gov/nchhstp/newsroom/2023/increased-sadness-and-violence-press-release.html.*

[19] Van Boekel, L.C., Brouwers, E.P., van Weeghel, J., & Garretsen, H.F. (2013). Stigma among health professionals towards patients with substance use disorders and its consequences for healthcare delivery: systematic review. Drug and Alcohol Dependence, 131(1–2), 23–35. DOI: 10.1016/j.drugalcdep.2013.02.018, available at *https://pubmed.ncbi.nlm.nih.gov/23490450/.*

[20] *Cf.* Jack Turbin. Ghost networks of psychiatrists make money for insurance companies but hinder patients' access to care. Stat News, June 17, 2019, *https://www.statnews.com/2019/06/17/ghost-networks-psychiatrists-hinder-patient-care/.*

[21] National Alliance on Mental Illness (2021). Mood Disorder Survey Report. *https://nami.org/NAMI/media/NAMI-Media/Research/NAMI-Mood-Disorder-Survey-White-Paper.pdf.*

[22] Esther Adeniran, Megan Quinn, Richard Wallace, Rachel R. Walden, Titilola Labisi, Afolakemi Olaniyan, Billy Brooks, Robert Pack (2023). A scoping review of barriers and facilitators to the integration of substance use treatment services into US mainstream health care, Drug and Alcohol Dependence Reports; Volume 7, 100152 *https://www.sciencedirect.com/science/article/pii/S2772724623000227.*

[23] Center for Behavioral Health Statistics and Quality (2022), Results from the 2021 National Survey on Drug Use and Health: Detailed Tables, Substance Abuse and Mental Health Services

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while only about 19 percent of people with opioid use disorder in 2021 received life-saving medications.[24] Sixty percent of rural Americans live in mental health professional shortage areas.[25] Additionally, non-metropolitan adults were more likely than metropolitan adults (43.7% vs. 34.5%) to see a general practitioner or family doctor, as opposed to a mental health specialist, for depressive symptoms, and among non-metropolitan adults with depression, fewer than 20 percent received treatment from a mental health professional.[26]

Moreover, against the backdrop of this mental health and substance use disorder crisis, when patients seek benefits under their health plan or coverage, they often find that coverage for treatment of mental health conditions or substance use disorders operates in a separate—and too often disparate—system than their health plan's coverage for treatment of medical/surgical conditions.[27] These disparities exacerbate the hardships faced by people living with mental health conditions and substance use disorders. The disparities also can magnify the challenges faced by the parents, children, and loved ones of people living with mental health conditions or substance use disorders as well as those who care for them, who are profoundly affected by the person's illness and their difficulties in getting, or inability to get, coverage for needed care.[28]

Ensuring meaningful access to mental health and substance use disorder care is vital to addressing the Nation's mental health and substance use disorder crisis. A key component of access is the availability of an adequate number of appropriate providers within a plan's network. A survey of adults with private health coverage found that plan participants were more likely to perceive their mental health provider networks as inadequate when compared to medical provider networks.[29] Furthermore, another survey noted that most plan participants reported choosing mental health services from out-of-network mental health providers based on provider quality issues.[30]

A 2019 Milliman report found a growing disparity in the utilization of out-of-network behavioral health care (which the report uses to refer to care for mental health conditions and substance use disorders) providers relative to out-of-network medical/surgical care providers.[31] The same report found that the disparity between how often out-of-network behavioral health inpatient facilities were used relative to out-of-network medical/surgical inpatient facilities had increased 85 percent between 2013 and 2017 for people with commercial preferred provider organization (PPO) health plans. Over the same period, there were also increasing disparities in the use of out-of-network outpatient facilities and office visits for mental health and substance use disorder treatment relative to the use of out-of-network outpatient facilities and office visits for medical/surgical care.[32] The report additionally noted a growing disparity in reimbursement rates (as a percentage of Medicare-allowed amounts) between in-network mental health and substance use disorder providers and medical/surgical providers. Primary care reimbursements were, on average, 23.8 percent higher than behavioral health office visit reimbursements relative to Medicare allowed amounts in 2017—up from a 20.8 percent difference in 2015.[33] Low reimbursement rates for behavioral health providers and high demand for services, among other factors, contribute to this difficulty finding in-network providers,[34] which can stifle efforts to receive necessary care for mental health conditions or substance use disorders.

MHPAEA's fundamental purpose is to ensure that individuals in group health plans or with group or individual health insurance coverage who seek treatment for covered mental health conditions or substance use disorders do not face greater barriers to accessing benefits for such mental health conditions or substance use disorders than they would face when seeking coverage for the treatment of a medical condition or for a surgical procedure.[35] Such barriers are particularly problematic when they effectively result in the loss of benefits that the plan or issuer purports to make available and that individuals reasonably expect to be covered, and they contravene MHPAEA's clear mandate that the financial requirements and treatment limitations applicable to mental health benefits or substance use disorder benefits be ''no more restrictive'' than the predominant requirements and limitations applicable to substantially all medical/surgical benefits.[36]

MHPAEA was enacted as bipartisan legislation reflecting what Congress saw as a shared public concern: that it is wrong to place greater burdens on people in need of mental health and

Administration, available at *https://www.samhsa.gov/data/report/2021-nsduh-detailed-tables.* For this purpose, ''any treatment'' includes having participated in a mutual aid group, such as Alcoholics Anonymous, Narcotics Anonymous, or SMART Recovery, and receiving services in a hospital through primary care.

[24] *Id.*

[25] Health Resources and Services Administration, Designated Health Professional Shortage Areas Statistics (data updated through June 30, 2023), available at *https://data.hrsa.gov/Default/GenerateHPSAQuarterlyReport* (last accessed July 18, 2023).

[26] Borders, TF. Major Depression, Treatment Receipt, and Treatment Sources among Non-Metropolitan and Metropolitan Adults. Lexington, KY: Rural and Underserved Health Research Center; 2020. Available at *https://www.ruralhealthresearch.org/publications/1348.*

[27] *See, generally,* Commonwealth Fund, Behavioral Health Care in the United States: How It Works and Where It Falls Short, available at *https://www.commonwealthfund.org/publications/explainer/2022/sep/behavioral-health-care-us-how-it-works-where-it-falls-short.*

[28] *See* National Alliance on Mental Illness, Mental Health By the Numbers, available at *https://www.nami.org/mhstats* (showing 8.4 million people in the U.S. provide care to an adult with a mental or emotional health issue); KFF, KFF/CNN Mental Health In America Survey, available at *https://www.kff.org/other/report/kff-cnn-mental-health-in-america-survey/* (showing half of adults say they have had a severe mental health crisis in their family); California Health Care Foundation, In Their Own Words: How Fragmented Care Harms People with Both Mental Illness and Substance Use Disorder, available at *https://www.chcf.org/publication/fragmented-care-harms-people-mental-illness-substance-use-disorder/.*

[29] *See* Busch, Susan H. and Kelly Kyanko, Assessment of Perception of Mental Health vs. Medical Health Plan Networks Among US Adults with Private Insurance, available at *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8536951/.*

[30] *See* Kelly A. Kyanko, Leslie A. Curry, and Susan H. Busch, Out-of-Network Providers Use More Likely in Mental Health than General Health Care Among Privately Insured, available at *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4707657/.*

[31] Melek, S., Davenport, S., Gray, T.J. (2019). Addiction and mental health vs. physical health: Widening disparities in network use and provider reimbursement (p. 6). Milliman. *https://assets.milliman.com/ektron/Addiction_and_mental_health_vs_physical_health_Widening_disparities_in_network_use_and_provider_reimbursement.pdf.*

[32] *Id.*

[33] *Id.* at pp. 6–7.

[34] *See* Busch, Susan H. and Kelly Kyanko, Assessment of Perception of Mental Health vs. Medical Health Plan Networks Among US Adults with Private Insurance, available at *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8536951/.*

[35] In a floor statement, Representative Patrick Kennedy (D–RI), one of the chief architects of MHPAEA, made the case for its passage on the grounds that ''access to mental health services is one of the most important and most neglected civil rights issues facing the Nation. For too long, persons living with mental disorders have suffered from discriminatory treatment at all levels of society'' 153 Cong. Rec. S1864–5 (daily ed. Feb. 12, 2007). Cf. H. Rept. 110–374, Part 3, available at *https://www.congress.gov/congressional-report/110th-congress/house-report/374.* (''The purpose of H.R. 1424, the 'Paul Wellstone Mental Health and Addiction Equity Act of 2007' is to have fairness and equity in the coverage of mental health and substance-related disorders vis-a-vis coverage for medical and surgical disorders.'')

[36] Internal Revenue Code (Code) section 9812(a)(3)(A), Employee Retirement Income Security Act of 1974 (ERISA) section 712(a)(3)(A), and Public Health Service Act (PHS Act) section 2726(a)(3)(A).

substance use disorder treatment than people in need of medical/surgical treatment under the same health coverage. However, almost 15 years after MHPAEA's enactment, disparities persist, as people face greater barriers when accessing benefits for mental health and substance use disorders under their plan or coverage than they do when accessing medical/surgical benefits. The Departments' experience since the MHPAEA final regulations were issued in 2013 (2013 final regulations) (78 FR 68240 (Nov. 13, 2013)) has shown that too often, group health plans and health insurance issuers offering group or individual health insurance coverage are not operating in compliance with MHPAEA, which can have devastating consequences for individuals with mental health conditions and substance use disorders and their families. The Departments continue to receive and investigate complaints that plans and issuers fail to comply with MHPAEA, by continuing to restrict access to benefits for mental health conditions and substance use disorders in ways that are more onerous and limiting than for medical or surgical care. As reflected in recent reports to Congress on MHPAEA compliance, the Departments found nearly all plans or issuers audited for MHPAEA compliance could not demonstrate compliance with the law's obligations in response to an initial request for NQTL comparative analyses.[37] As a result of these failures, participants and beneficiaries routinely encounter additional barriers to access and are denied needed and potentially lifesaving care for opioid use disorder, eating disorders, autism spectrum disorder (ASD), anxiety, depression, and other mental health conditions and substance use disorders. The harm to these participants and beneficiaries, and to their families, friends, co-workers, and others, is incalculable.

In the last 2 years, the Departments have made an unprecedented commitment to advance parity for mental health and substance use disorder care by making it a top enforcement priority, especially with respect to NQTLs.[38] Specifically, EBSA, which has primary enforcement jurisdiction over MHPAEA for approximately 2.5 million private, employment-based group health plans covering approximately 133 million individuals, is taking extraordinary steps to enforce mental health and substance use disorder parity requirements and ensure that it is using its full authority to help participants and beneficiaries receive equitable coverage for mental health and substance use disorder treatment. Similarly, CMS continues to prioritize its MHPAEA enforcement activities with respect to non-Federal governmental plans nationwide [39] and health insurance issuers offering group and individual health insurance coverage in States where CMS is the direct enforcer of MHPAEA with respect to issuers.[40] [41]

In addition to using their enforcement authority, the Departments continue to work to reduce the stigma and discrimination that individuals with mental health conditions and substance use disorders face, raise awareness so these individuals can receive the treatment they need and the benefits to which they are entitled, and engage consumer advocates, members of the regulated community, State regulators, and other interested parties to inform the Departments' efforts in addressing the nation's mental illness and substance use disorder epidemic. These efforts have helped to deepen the Departments' understanding of the barriers to mental health and substance use disorder treatment Americans face, inform DOL's and HHS's MHPAEA enforcement approach, and connect advocacy groups to government resources.

The Departments have also continued to help plans, issuers, consumers, providers, States, and other interested parties understand and comply with MHPAEA's requirements, including the NQTL comparative analysis requirements. Additionally, the Departments have worked to help families, caregivers, and individuals understand the law and benefit from it, as Congress intended.

Since the promulgation of the 2013 final regulations on November 13, 2013,[42] the Departments have provided extensive guidance and compliance assistance materials to the regulated community, State regulators, and other interested parties to facilitate the implementation and enforcement of MHPAEA, as discussed later in this preamble, including numerous sets of Frequently Asked Questions (FAQs),[43]

[37] 2022 MHPAEA Report to Congress, p. 4, available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2022-realizing-parity-reducing-stigma-and-raising-awareness.pdf* and *https://www.cms.gov/files/document/2022-mhpaea-report-congress.pdf;* 2023 MHPAEA Comparative Analysis Report to Congress, July 2023 (2023 MHPAEA Report to Congress), available at *www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2023-mhpaea-comparative-analysis.pdf* and *https://www.cms.gov/cciio/resources/forms-reports-and-other-resources#mental-health-parity.*

[38] As discussed in more detail later in this preamble, NQTLs are generally non-numerical requirements that limit the scope or duration of benefits, such as prior authorization requirements, step therapy, and standards for provider admission to participate in a network, including methodologies for determining reimbursement rates.

[39] PHS Act section 2723(b).

[40] PHS Act section 2723(a).

[41] CMS currently enforces MHPAEA with respect to issuers in Texas and Wyoming. In addition, CMS has collaborative enforcement agreements with Alabama, Florida, Louisiana, Montana, and Wisconsin. These States with collaborative enforcement agreements with CMS perform State regulatory and oversight functions with respect to some or all of the applicable provisions of title XXVII of the PHS Act, including MHPAEA. However, if the State finds a potential violation and is unable to obtain compliance by an issuer, the State will refer the matter to CMS for possible enforcement action.

[42] 78 FR 68240 (Nov. 13, 2013).

[43] *See, e.g.,* FAQs About Affordable Care Act Implementation Part V and Mental Health Parity Implementation (Dec. 22, 2010), available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-v.pdf* and *https://www.hhs.gov/guidance/document/affordable-care-act-implementation-faqs-set-5*; FAQs About Affordable Care Act Implementation (Part VII) and Mental Health Parity Implementation (Nov. 17, 2011), available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-vii.pdf* and *https://www.hhs.gov/guidance/document/affordable-care-act-implementation-faqs-set-7*; Understanding Implementation of the Mental Health Parity and Addiction Equity Act of 2008 (May 9, 2012), available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/understanding-implementation-of-mhpaea.pdf*; FAQs for Employees about the Mental Health Parity and Addiction Equity Act (May 18, 2012), available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/mhpaea-2.pdf*; FAQs About Affordable Care Act Implementation (Part XVII) and Mental Health Parity Implementation (Nov. 8, 2013), available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-xvii.pdf* and *https://www.hhs.gov/guidance/document/affordable-care-act-implementation-faqs-set-17*; FAQs About Affordable Care Act Implementation (Part XVIII) and Mental Health Parity Implementation (Jan. 9, 2014), available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-xviii.pdf and https://www.hhs.gov/guidance/document/affordable-care-act-implementation-faqs-set-18*; FAQs About Affordable Care Act Implementation (Part XXIX) and Mental Health Parity Implementation (Oct. 23, 2015), available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-xxix.pdf* and *https://www.hhs.gov/guidance/document/affordable-care-act-implementation-faqs-set-29* (FAQs Part XXIX); FAQs About Affordable Care Act Implementation Part 31, Mental Health Parity Implementation, and Women's Health and Cancer Rights Act Implementation (Apr. 20, 2016), available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-31.pdf* and *https://www.hhs.gov/guidance/document/affordable-care-act-implementation-faqs-set-31*; FAQs About Affordable Care Act Implementation Part 34 and Mental Health and Substance Use Disorder Parity Implementation (Oct. 27, 2016), available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/*

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fact sheets,[44] compliance assistance tools,[45] templates,[46] reports,[47] and publications.[48] Despite this unprecedented outreach, plans and issuers continue to fall short of MHPAEA's central mandate to ensure that participants, beneficiaries, and enrollees do not face greater barriers and restrictions to accessing benefits for mental health conditions or substance use disorders than they face when accessing benefits for a medical condition or surgical procedure. This noncompliance is especially evident with respect to the design and application of NQTLs that apply to mental health and substance use disorder benefits. Accordingly, Congress amended MHPAEA in the CAA, 2021, as described later in this preamble.

The Departments are proposing these revised rules to reinforce MHPAEA's fundamental objective, to ensure that limitations on mental health and substance use disorder benefits are no

faqs/aca-part-34.pdf and *https://www.hhs.gov/guidance/document/affordable-care-act-implementation-faqs-set-34* (FAQs Part 34); FAQs About Mental Health and Substance Use Disorder Parity Implementation and the 21st Century Cures Act Part 38 (June 16, 2017), available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-38.pdf* and *https://www.hhs.gov/guidance/document/affordable-care-act-implementation-faqs-set-38* (FAQs Part 38); Proposed FAQs About Mental Health and Substance Use Disorder Parity Implementation and the 21st Century Cures Act Part 39, available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-39-proposed.pdf* (Proposed FAQs Part 39); Final FAQs About Mental Health and Substance Use Disorder Parity Implementation and the 21st Century Cures Act Part 39 (Sept. 5, 2019), available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-39-final.pdf* and *https://www.hhs.gov/guidance/document/affordable-care-act-implementation-faqs-final-set-39* (FAQs Part 39); FAQs About Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security Act Implementation Part 43 (June 23, 2020), available at *https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-43.pdf* and *https://www.hhs.gov/guidance/document/faqs-about-families-first-coronavirus-response-act-and-coronavirus-aid-relief-and-0* (FAQs part 43); FAQs About Mental Health and Substance Use Disorder Parity Implementation and the Consolidated Appropriations Act, 2021 Part 45 (Apr. 2, 2021), available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-45.pdf* and *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/MHPAEA-FAQs-Part-45.pdf* (FAQs Part 45); and Mental Health Parity and Addiction Equity Act (MHPAEA) FAQs, available at *https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/mhpaea-1#*.

[44] *See, e.g.,* The Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) Fact Sheet (Jan. 2010), available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/fact-sheets/mhpaea.pdf*; MHPAEA Enforcement Fact Sheet (Jan. 2016), available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/fact-sheets/mhpaea-enforcement.pdf*; FY 2016 MHPAEA Enforcement Fact Sheet, available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/fact-sheets/mhpaea-enforcement-2016.pdf*; FY 2017 MHPAEA Enforcement Fact Sheet, available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/fact-sheets/mhpaea-enforcement-2017.pdf*; FY 2018 MHPAEA Enforcement Fact Sheet, available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/fact-sheets/mhpaea-enforcement-2018.pdf*; FY 2019 MHPAEA Enforcement Fact Sheet, available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/mhpaea-enforcement-2019.pdf* and *https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/mhpaea-enforcement-2019.pdf*; FY 2020 MHPAEA Enforcement Fact Sheet, available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/mhpaea-enforcement-2020.pdf* and *https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/mhpaea-enforcement-2020.pdf*; FY 2021 MHPAEA Enforcement Fact Sheet, available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/mhpaea-enforcement-2021.pdf*; and FY 2022 MHPAEA Enforcement Fact Sheet, available at *www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/mhpaea-enforcement-2022.pdf*.

[45] *See* Self-Compliance Tool for Part 7 of ERISA: Health Care-Related Provisions, available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/publications/compliance-assistance-guide-appendix-a.pdf*; 2018 Self-Compliance Tool for the Mental Health Parity and Addiction Equity Act (MHPAEA), available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/self-compliance-tool-2018.pdf*; and 2020 Self-Compliance Tool for the Mental Health Parity and Addiction Equity Act (MHPAEA), available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/self-compliance-tool.pdf*.

[46] *See* Form to Request Documentation from an Employer-Sponsored Health Plan or a Group or Individual Market Insurer Concerning Treatment Limitations, available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/mhpaea-disclosure-template.pdf*.

[47] *See, e.g.,* DOL 2012 Report to Congress: Compliance With the Mental Health Parity and Addiction Equity Act of 2008 (Jan. 1, 2012), available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/publications/mhpaea-report-to-congress-2012.pdf*; DOL 2014 Report to Congress: Compliance of Group Health Plans (and Health Insurance Coverage Offered in Connection with Such Plans With the Requirements of the Mental Health Parity and Addiction Equity Act of 2008 (Sept. 2014), available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/publications/mhpaea-report-to-congress-2014.pdf*; DOL 2016 Report to Congress: Improving Healoverage for Mental Health and Substance Use Disorder Patients Including Compliance with the Federal Mental Health and Substance Use Disorder Parity Provisions (Jan. 2016), available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/improving-health-coverage-for-mental-health-and-substance-use-disorder-patients.pdf*; HHS Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) Enforcement Report (Dec. 12, 2017), available at *https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/HHS-2008-MHPAEA-Enforcement-Period.pdf*; DOL 2018 Report to Congress: Pathway to Full Parity, available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/dol-report-to-congress-2018-pathway-to-full-parity.pdf*; 21st Century Cures Act: Section 13002 Action Plan for Enhanced Enforcement of Mental Health and Substance Use Disorder Coverage, available at *https://www.hhs.gov/sites/default/files/parity-action-plan-b.pdf*; HHS Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) Enforcement Report for the 2018 Federal Fiscal Year, available at *https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/FY2018-MHPAEA-Enforcement-Report.pdf*; DOL 2020 Report to Congress: Parity Partnerships: Working Together, available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/dol-report-to-congress-parity-partnerships-working-together.pdf*; 2022 Report to Congress: Realizing Parity, Reducing Stigma, and Raising Awareness, available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2022-realizing-parity-reducing-stigma-and-raising-awareness.pdf* and *https://www.cms.gov/files/document/2022-mhpaea-report-congress.pdf*; MHPAEA Comparative Analysis Report to Congress, July 2023, available at *www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2023-mhpaea-comparative-analysis.pdf* and *https://www.cms.gov/cciio/resources/forms-reports-and-other-resources#mental-health-parity*.

[48] *See* Consumer Guide to Disclosure Rights: Making the Most of Your Mental Health and Substance Use Disorder Benefits, available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/disclosure-guide-making-the-most-of-your-mental-health-and-substance-use-disorder-benefits.pdf*; Know Your Rights: Parity for Mental Health and Substance Use Disorder Benefits, available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/know-your-rights-parity-for-mental-health-and-substance-use-disorder-benefits.pdf*; Parity of Mental Health and Substance Use Benefits with Other Benefits: Using Your Employer-Sponsored Health Plan to Cover Services, available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/parity-of-mental-health-and-substance-use-benefits-with-other-benefits.pdf*; Understanding Parity: A Guide to Resources for Families and Caregivers, available at *https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/mental-health-parity/understanding-parity-a-guide-to-resources-for-families-and-caregivers.pdf*; Warning Signs—Plan or Policy Non-Quantitative Treatment Limitations (NQTLs) that Require Additional Analysis to Determine Mental Health Parity Compliance, available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/warning-signs-plan-or-policy-nqtls-that-require-additional-analysis-to-determine-mhpaea-compliance.pdf*; Mental Health Parity Provisions Questions and Answers, available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/publications/compliance-assistance-guide-mhpaea.pdf*; Mental Health and Substance use Disorder Parity: Compliance Assistance Materials Index, available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/compliance-assistance-materials-index.pdf*; The Essential Aspects of Parity: A Training Tool for Policymakers, available at *https://store.samhsa.gov/product/essential-aspects-of-parity-training-tool-for-policymakers/pep21-05-00-001*; and Approaches in Implementing the Mental Health Parity and Addiction Equity Act: Best Practices from the States, available at *https://store.samhsa.gov/product/Approaches-in-Implementing-the-Mental-Health-Parity-and-Addiction-Equity-Act-Best-Practices-from-the-States/SMA16-4983*.

more restrictive than the limitations applicable to medical/surgical benefits. These proposed rules also would implement important requirements that Congress enacted in the CAA, 2021 to ensure that plans and issuers perform and document their NQTL comparative analyses and provide them to the Departments or an applicable State authority upon request for evaluation of compliance with MHPAEA. The aim of these proposed rules is to ensure that individuals benefit from the full protections afforded to them under MHPAEA, while providing clear standards for plans and issuers on how to comply with MHPAEA.

Specifically, the proposed regulations would:

- Make clear that MHPAEA requires that individuals can access their mental health and substance use disorder benefits in parity with medical/surgical benefits.
- Provide specific examples that make clear that plans and issuers cannot use more restrictive prior authorization and other medical management techniques for mental health and substance use disorder benefits; standards related to network composition for mental health and substance use disorder benefits; and factors to determine out-of-network reimbursement rates for mental health and substance use disorder providers.
- Require plans and issuers to collect and evaluate outcomes data and take action to address material differences in access to mental health and substance use disorder benefits as compared to medical/surgical benefits, with a specific focus on ensuring that there are not any material differences in access as a result of the application of their network composition standards.
- Codify the requirement that plans and issuers conduct meaningful comparative analyses to measure the impact of NQTLs. This includes evaluating standards related to network composition, out-of-network reimbursement rates, and prior authorization NQTLs.
- Implement the sunset provision for self-funded, non-Federal governmental plan elections to opt out of compliance with MHPAEA, adopted in the CAA, 2023.

As a result of these proposals, the Departments anticipate changes in network composition and medical management techniques that would result in more robust mental health and substance use disorder provider networks and fewer and less restrictive prior authorization requirements for individuals seeking mental health and substance use disorder treatment.

Under a regulatory regime in which MHPAEA's promise of parity is realized, participants, beneficiaries, and enrollees would experience financial requirements and treatment limitations for mental health and substance use disorder benefits that are in parity with those applied to their medical/surgical benefits. These proposed rules are designed to achieve MHPAEA's purpose to ensure that participants, beneficiaries, and enrollees will not face greater restrictions on access to obtaining mental health and substance use disorder benefits than those for medical/surgical benefits. At the same time, the proposed rules also aim to ensure that benefit structures that apply limitations that reflect independent professional medical or clinical standards or guard against indicators of fraud, waste, and abuse (while minimizing the negative impact on access to appropriate benefits) would continue to be permitted, as the Departments are of the view that such limitations are premised on standards that generally provide an independent and less suspect basis for determining access to mental health and substance use disorder treatment. These proposed rules also aim to ensure that plans and issuers that offer mental health and substance use disorder benefits strive to attain and maintain mental health and substance use disorder treatment provider networks that are as robust as their medical/surgical provider networks in terms of available in-network providers and facilities–not just as shown by a list of names in a provider directory, but as measured by actual provider participation and as evidenced by participant usage.

In evaluating their compliance with these proposed rules, plans and issuers would be required to consider whether an NQTL is inhibiting access to treatment for mental health conditions and substance use disorders by examining whether the NQTL that applies to mental health or substance use disorder benefits is more restrictive than the predominant NQTL that applies to substantially all medical/surgical benefits within a classification of benefits set forth under the regulations.[49] A plan or issuer would also be required to consider whether the processes, strategies, evidentiary standards, or other factors that it uses to design or apply an NQTL to mental health or substance use disorder benefits in a classification are comparable to, and applied no more stringently than, those used in designing and applying the NQTL to medical/surgical benefits in the same classification. Under these proposed rules, plans and issuers would be required to consider data relevant to an NQTL's impact on participants' or beneficiaries'[50] abilities to obtain mental health and substance use disorder benefits under the plan or coverage relative to its impact on access to medical/surgical benefits, and to take action to address the potential causes of material differences in access identified through the data as necessary to ensure compliance. As the proposal makes clear, ensuring that people seeking mental health and substance use disorder treatment do not face greater barriers to access to benefits for such treatment is central to the fundamental purpose of MHPAEA. These proposed rules would ensure that NQTLs that apply to mental health and substance use disorder benefits are ''no more restrictive,'' and that processes, strategies, evidentiary standards, and other factors are ''comparable to, and applied no more stringently,'' than those applicable to medical/surgical benefits. These proposed rules' focus on access to mental health and substance use disorder benefits and constraints on obtaining such benefits would add needed clarity to the statutory requirements for the regulated community and other interested parties.

Under the current rules, plans and issuers are generally permitted to prepare NQTL comparative analyses without regard to the overall impact of NQTLs on participants and beneficiaries. This has contributed to plans and issuers looking for ways to

[49] The required classifications of benefits (and permissible sub-classifications) used to apply the MHPAEA regulations are addressed at 26 CFR 54.9812–1(c)(2)(ii), 29 CFR 2590.712(c)(2)(ii), and 45 CFR 146.136(c)(2)(ii).

[50] These proposed rules would apply directly to group health plans or health insurance coverage offered by an issuer in connection with a group health plan, and would apply to individual health insurance coverage by cross-reference through 45 CFR 147.160, which currently provides that the requirements of 45 CFR 146.136 apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner and to the same extent as to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the large group market. As noted below, HHS also proposes an amendment to 45 CFR 147.160 to also include a cross-reference to proposed 45 CFR 146.137 to similarly extend the new proposed comparative analysis requirements to individual health insurance coverage in the same manner and to the same extent as group health insurance coverage. For simplicity, this preamble generally refers only to the applicability on group health plans and health insurance coverage offered in connection with a group health plan and to participants and beneficiaries enrolled in such a plan or coverage, but references to participants and beneficiaries should also be considered to include enrollees in the individual market, unless otherwise specified.

characterize the processes, strategies, evidentiary standards, and other factors associated with an NQTL as being ''comparable'' and ''applied no more stringently'' through careful word choice, without regard to how, in operation, the limitation burdens participants and beneficiaries by limiting access to, or by limiting the scope and duration of, the plan's or issuer's mental health and substance use disorder benefits relative to medical/surgical benefits. Such limitations on mental health and substance use disorder benefits under the plan or coverage must be analyzed in terms of the comparative burden on access they place (that is, whether they are more restrictive) on individuals.

These proposed rules set forth a number of standards that are intended to reinforce the proper application of the statutory and regulatory requirements; promote compliance with the NQTL comparative analysis requirements; explain how the various components of the regulation work together; and ensure that the purpose of MHPAEA, to remove greater barriers to access to mental health and substance use disorder benefits, is fulfilled. The Departments recognize the value of input from interested parties and welcome feedback on all aspects of the approach set forth in these proposed rules, as well as alternative approaches that would enable the Departments to more effectively implement MHPAEA.

B. The Mental Health Parity Act, The Mental Health Parity and Addiction Equity Act, and the Affordable Care Act

In 1996, Congress enacted the Mental Health Parity Act of 1996 (MHPA 1996), which required parity in aggregate lifetime and annual dollar limits for mental health benefits and medical/surgical benefits. These mental health parity provisions were codified in Employee Retirement Income Security Act of 1974 (ERISA) section 712, PHS Act section 2705, and Internal Revenue Code (Code) section 9812, and applied to group health plans and health insurance coverage offered in connection with a group health plan.[51]

MHPAEA was enacted on October 3, 2008, as sections 511 and 512 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 (Division C of Pub. L. 110–343, 122 Stat. 3765), to amend ERISA section 712, PHS Act section 2705, and Code section 9812 to add new requirements, including provisions to apply the mental health parity requirements to substance use disorder benefits, and make further amendments to the existing mental health parity provisions.

MHPAEA, as enacted, generally requires that group health plans and health insurance issuers offering group health insurance coverage ensure that the financial requirements and treatment limitations applicable to mental health or substance use disorder benefits be no more restrictive than those applicable to medical/surgical benefits and that there be no separate financial requirements and treatment limitations applicable only with respect to mental health or substance use disorder benefits. Together with the existing requirements for parity in aggregate lifetime and annual dollar limits, this is referred to as providing mental health and substance use disorder benefits ''in parity'' with medical/surgical benefits.

The Patient Protection and Affordable Care Act (Pub. L. 111–148, 123 Stat. 3028) was enacted on March 23, 2010, and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, 124 Stat. 1029) was enacted on March 30, 2010 (collectively, the Affordable Care Act). The Affordable Care Act reorganized, amended, and added to the provisions of part A of title XXVII of the PHS Act relating to group health plans and health insurance issuers in the group and individual markets. The Affordable Care Act added section 715(a)(1) to ERISA and section 9815(a)(1) to the Code to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and to make them applicable to group health plans and health insurance issuers providing health insurance coverage in connection with group health plans. The PHS Act sections incorporated by these references are sections 2701 through 2728.

The Affordable Care Act extended MHPAEA to apply to individual health insurance coverage and redesignated MHPAEA in the PHS Act as section 2726.[52] Additionally, section 1311(j) of the Affordable Care Act applies PHS Act section 2726 to qualified health plans (QHPs) [53] in the same manner and to the same extent as to health insurance issuers and group health plans. Furthermore, HHS' regulations regarding essential health benefits (EHBs) [54] require health insurance issuers offering non-grandfathered health insurance coverage in the individual and small group markets to comply with MHPAEA and its implementing regulations in order to satisfy the requirement to cover ''mental health and substance use disorder services, including behavioral health treatment,'' as part of EHBs.[55]

On April 28, 2009, the Departments published a request for information soliciting comments on issues under MHPAEA (2009 RFI).[56] Over the next few years, the Departments considered comments regarding MHPAEA and issued further clarifications and guidance. On February 2, 2010, the Departments published interim final regulations implementing MHPAEA (interim final regulations).[57] After considering the comments and other feedback received from interested parties, the Departments published the 2013 final regulations.[58]

The 2013 final regulations established an exhaustive list of six classifications of benefits (not counting the exhaustive list of permissible sub-classifications also articulated in the 2013 final regulations): inpatient, in-network; inpatient, out-of-network; outpatient, in-network; outpatient, out-of-network; emergency care; and prescription drugs.

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[51] Public Law 104–204, 110 Stat. 2874 (Sept. 26, 1996). The Departments published interim final rules implementing MHPA 1996 at 62 FR 66932 (Dec. 22, 1997).

[52] The requirements of MHPAEA generally apply to both grandfathered and non-grandfathered health plans. *See* section 1251 of the Affordable Care Act and its implementing regulations at 26 CFR 54.9815–1251, 29 CFR 2590.715–1251, and 45 CFR 147.140. Under section 1251 of the Affordable Care Act, grandfathered health plans are exempted only from certain Affordable Care Act requirements enacted in Subtitles A and C of Title I of the Affordable Care Act. The provisions extending MHPAEA requirements to individual health insurance coverage and requiring that qualified health plans comply with MHPAEA are not included in these sections. However, because MHPAEA requirements apply to health insurance coverage offered in the small group market only through the requirement to provide EHB, which does not apply to grandfathered health plans, the requirements of MHPAEA do not apply to grandfathered health plans offered in the small group market.

[53] A QHP is a health insurance plan that is certified by a health insurance exchange that it meets certain minimum standards established under the Affordable Care Act and described in subpart C of 45 CFR part 156. *See* 45 CFR 155.20.

[54] Section 1302 of the Affordable Care Act requires non-grandfathered health plans in the individual and small group markets to cover essential health benefits (EHB), which include items and services in the following ten benefit categories: (1) ambulatory patient services; (2) emergency services; (3) hospitalization; (4) maternity and newborn care; (5) mental health and substance use disorder services including behavioral health treatment; (6) prescription drugs; (7) rehabilitative and habilitative services and devices; (8) laboratory services; (9) preventive and wellness services and chronic disease management; and (10) pediatric services, including oral and vision care. *See* 45 CFR 156.115 for description of the benefits a health plan must provide to provide EHB.

[55] Section 1302(b)(1)(E) of the Affordable Care Act; 45 CFR 156.115(a)(3).

[56] 74 FR 19155 (Apr. 28, 2009).

[57] 75 FR 5410 (Feb. 2, 2010).

[58] 78 FR 68240 (Nov. 13, 2013).

If a plan or health insurance coverage provides benefits for a mental health condition or substance use disorder in any of these classifications of benefits, benefits for that condition or disorder must be provided in every classification in which medical/surgical benefits are provided. The 2013 final regulations specify that the parity requirements apply to financial requirements, such as deductibles, copayments, and coinsurance; quantitative treatment limitations that are expressed numerically, such as day or visit limits; and NQTLs, which are generally non-numerical requirements that limit the scope or duration of benefits, such as prior authorization requirements, step therapy requirements, and standards for provider admission to participate in a network, including methodologies for determining reimbursement rates.

Under MHPAEA, financial requirements and treatment limitations imposed on mental health or substance use disorder benefits cannot be more restrictive than the predominant financial requirements and treatment limitations that apply to substantially all medical/surgical benefits in a classification.[59] The 2013 final regulations defined the ''substantially all'' numerical standard for a financial requirement or quantitative treatment limitation as two-thirds, using the same approach as the regulations implementing MHPA 1996 with respect to aggregate annual and lifetime limits.[60] The 2013 final regulations also quantified ''predominant'' to mean the level of the financial requirement or quantitative treatment limitation that applies to more than one-half of medical/surgical benefits in the relevant classification subject to the financial requirement or quantitative treatment limitation. Using these numerical standards, the Departments established a mathematical test by which plans and issuers could determine if a financial requirement or quantitative treatment limitation that applies to medical/surgical benefits in a classification may be applied to mental health and substance use disorder benefits in that classification, and if so, what level of the financial requirement or quantitative treatment limitation is the most restrictive level that could be imposed on mental health or substance use disorder benefits within the classification.

MHPAEA generally prohibits separate financial requirements and treatment limitations that apply only to mental health and substance use disorder benefits.[61] The 2013 final regulations also prohibit plans and issuers from applying separate cumulative financial requirements, such as deductibles or out-of-pocket maximums, or separate cumulative quantitative treatment limitations, such as annual or lifetime day or visit limits, to mental health or substance use disorder benefits in a classification.[62]

In addition, the 2013 final regulations require that a group health plan or health insurance issuer may not impose an NQTL with respect to mental health and substance use disorder benefits in any classification unless, under the terms of the plan (or health insurance coverage) as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the NQTL to mental health and substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation to medical/surgical benefits in the same classification.[63] The 2013 final regulations also implemented the statutory disclosure requirements imposed on group health plans and health insurance issuers that are subject to MHPAEA's requirements.[64]

C. Guidance

As described earlier in this preamble, since the promulgation of the 2013 final regulations, the Departments have provided extensive guidance and compliance assistance materials to the regulated community, State regulators, and other interested parties to facilitate the implementation and enforcement of MHPAEA. Specifically, the Departments have jointly issued 15 sets of FAQs with 96 questions, eight enforcement fact sheets, six compliance assistance tools and templates, seven reports to Congress, six press releases, and seven consumer publications. In general, the Departments' FAQs are designed to provide additional guidance and clarification on how MHPAEA applies in specific contexts and are informed by questions raised by interested parties and scenarios encountered in the context of the Departments' enforcement efforts. For example, FAQs Part 34 addresses how MHPAEA applies to treatment of substance use disorders (such as treating opioid use disorder with medication) and provides examples of impermissible NQTLs (such as more stringent fail-first or step-therapy requirements, including where an individual cannot reasonably satisfy if there are no available providers that can provide services related to the requirement in the participant's geographic area).[65]

Guidance issued by the Departments also reflects stakeholder feedback and, in several instances, guidance documents were proposed before they were issued in final form. For example, the Departments proposed FAQs Part 39 on April 23, 2018. The finalized FAQs Part 39 was issued on September 5, 2019, and incorporate insights from the regulated community regarding compliance issues faced by plans and issuers, as well as issues faced by plan participants and their authorized representatives when seeking information about mental health and substance use disorder benefits. FAQs Part 39 also provides guidance on how the law and regulations apply to treatments for eating disorders, opioid use disorder, and ASD, as well as exclusions for experimental or investigative treatments, and standards for provider admission to a plan's or issuer's network, including the methodology for determining reimbursement rates for mental health and substance use disorder providers.[66]

In addition to FAQs issued after the promulgation of the 2013 final regulations, the Departments have issued, generally every 2 years, an updated compliance program guidance document (the MHPAEA Self-Compliance Tool), which is intended to help plans and issuers, State regulators, and other interested parties comply with and understand MHPAEA and the additional related requirements under ERISA that apply to group health plans. The Departments most recently issued

[59] Code section 9812(a)(3)(A), ERISA section 712(a)(3)(A), and PHS Act section 2726(a)(3)(A).

[60] With respect to aggregate lifetime and annual limits under MHPA 1996, the regulations in 26 CFR 54.9812–1(b); 29 CFR 2590.712(b), and 45 CFR 146.136(b) set forth rules based on whether a plan (or health insurance coverage) includes an aggregate lifetime or annual dollar limit that applies to less than one-third or at least two-thirds of all medical/surgical benefits. These provisions do not address the provisions of PHS Act section 2711, as incorporated by ERISA section 715 and Code section 9815, which prohibit imposing lifetime and annual limits on the dollar value of EHBs. As a result, plans and issuers cannot impose lifetime and annual dollar limits on mental health and substance use disorder benefits that are not EHBs, if such a limit applies to less than one-third of all medical/surgical benefits.

[61] Code section 9812(a)(3)(A), ERISA section 712(a)(3)(A), and PHS Act section 2726(a)(3)(A).

[62] 26 CFR 54.9812–1(c)(3)(v), 29 CFR 2590.712(c)(3)(v), 45 CFR 146.136(c)(3)(v) and 147.160.

[63] 26 CFR 54.9812–1(c)(4)(i), 29 CFR 2590.712(c)(4)(i), 45 CFR 146.136(c)(4)(i) and 147.160.

[64] 26 CFR 54.9812–1(d), 29 CFR 2590.712(d), 45 CFR 146.136(d) and 147.160.

[65] *See* FAQs Part 34, Q4–Q9.

[66] *See* FAQs Part 39, Q1–8.

the MHPAEA Self-Compliance Tool in 2020 (2020 MHPAEA Self-Compliance Tool).[67] The 2020 MHPAEA Self-Compliance Tool includes an illustrative, non-exhaustive list of NQTLs, a process for conducting NQTL comparative analyses, a list of the types of documents and information that a plan or issuer should have available to support its analyses, and illustrations of specific fact patterns to aid in compliance.[68]

The 2020 MHPAEA Self-Compliance Tool includes a stepwise process a plan or issuer can follow to perform an analysis assessing whether its NQTLs satisfy MHPAEA's parity requirements.[69] Under this stepwise process, the plan or issuer should identify all NQTLs that apply to benefits under the plan or coverage. The plan or issuer should also identify all the medical/surgical benefits and mental health and substance use disorder benefits to which each NQTL applies. After identifying all NQTLs and the benefits to which each NQTL applies, the 2020 MHPAEA Self-Compliance Tool suggests the plan or issuer identify the factors considered in the design of each NQTL. The plan or issuer should also identify the sources used to define those factors. Plans and issuers have flexibility in determining the factors and sources of factors to apply to NQTLs, so long as they are comparable and applied no more stringently to mental health and substance use disorder benefits than to medical/surgical benefits in the respective benefits classification. When identifying the sources of the factors considered in designing an NQTL, the plan or issuer should also identify any threshold of a factor that will implicate the NQTL.

After identifying the plan's NQTLs, their application to mental health and substance use disorder benefits and to medical/surgical benefits, the factors used in designing each NQTL, and the sources of those factors, the plan or issuer should determine whether the processes, strategies, and evidentiary standards used in applying the NQTL are comparable and no more stringently applied to mental health and substance use disorder benefits than to medical/surgical benefits, both as written and in operation, in the relevant benefit classification. For instance, if a plan's or issuer's utilization review is conducted by different entities or individuals for mental health and substance use disorder benefits and medical/surgical benefits, the plan or issuer should have measures in place to ensure comparable application of utilization review policies.

The 2020 MHPAEA Self-Compliance Tool stresses that measuring and evaluating results and quantitative outcomes can be helpful to identify potential areas of noncompliance. For example, comparing a plan's or issuer's average reimbursement rates for both mental health and substance use disorder providers and medical/surgical providers against an external benchmark of reimbursement rates, such as Medicare, may help identify whether the underlying methodology used to determine the plan's or issuer's reimbursement rates warrants additional review. The 2020 MHPAEA Self-Compliance Tool notes that substantially disparate results are a red flag that a plan or issuer may be imposing an NQTL on mental health and substance use disorder benefits in a way that fails to satisfy the parity requirements. Other warning signs of potential noncompliance identified in the 2020 MHPAEA Self-Compliance Tool include generally paying at or near Medicare reimbursement rates for mental health or substance use disorder benefits, while paying much more than Medicare reimbursement rates for medical/surgical benefits, and reimbursing psychiatrists, on average, less than medical/surgical physicians for the same evaluation and management codes.[70]

The 2020 MHPAEA Self-Compliance Tool also provides many compliance tips on how an NQTL should be analyzed. For example, a plan or issuer should have information available to substantiate how factors are used to design or apply any specific NQTL to both medical/surgical benefits and mental health or substance use disorder benefits. The plan or issuer should be clear as to whether and why any factors were given more weight than others and should be able to explain any variation in the application of a guideline or evidentiary standard, including the process and factors relied upon for establishing the variation. To comply with MHPAEA's parity requirements, plans and issuers must adopt measures for mental health and substance use disorder providers that are at least comparable to and no more stringently applied (with regard to limiting the scope and duration of a participant's, beneficiary's, or enrollee's benefits under the plan or coverage) than those applied to medical/surgical providers. This includes taking steps to help address provider shortages, ensure an adequate network of mental health and substance use disorder providers, and ensure reasonable patient wait times to avoid noncompliance with MHPAEA's parity requirements. By providing a basic framework for plans and issuers to do a stepwise analysis and providing additional warning signs and tips, the 2020 MHPAEA Self-Compliance Tool has provided additional guidance for plans and issuers to comply with the requirements of MHPAEA with respect to NQTLs.

D. The Consolidated Appropriations Act, 2021 and Related Guidance

The CAA, 2021 was enacted on December 27, 2020.[71] Section 203 of Title II of Division BB of the CAA, 2021 amended MHPAEA, in part, by adding Code section 9812(a)(8), ERISA section 712(a)(8), and PHS Act section 2726(a)(8) to expressly require group health plans and health insurance issuers offering group or individual health insurance coverage that include both medical/surgical benefits and mental health or substance use disorder benefits and impose NQTLs on mental health or substance use disorder benefits to perform and document their comparative analyses of the design and application of NQTLs.[72] Further, plans and issuers are required to make their comparative analyses and other applicable information available to the Departments or applicable State authorities, upon request.[73] The comparative analysis requirement took effect on February 10, 2021, 45 days after the date of enactment of the CAA, 2021.

In order to advance compliance with MHPAEA, the CAA, 2021 states that the Departments shall request that a group health plan or health insurance issuer

[67] Section 13001(a) of the 21st Century Cures Act added section 2726(a)(6) of the PHS Act, which directs the Departments to provide a publicly available compliance program guidance document that is updated every 2 years.

[68] *See* Self-Compliance Tool for the Mental Health Parity and Addiction Equity Act (MHPAEA) (2020), available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/self-compliance-tool.pdf*. The Departments issued the proposed 2020 MHPAEA Self-Compliance Tool on June 19, 2020, and requested comments from interested parties. Engagement with interested parties through written comments and listening sessions provided vital feedback for finalizing the 2020 update to the MHPAEA Self-Compliance Tool, and that final version includes revisions in response to that feedback.

[69] *Id.* at section F (at pp. 21–28).

[70] 2020 MHPAEA Self-Compliance Tool, at p. 21, available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/self-compliance-tool.pdf*.

[71] Public Law 116–260, 134 Stat. 1182 (Dec. 27, 2020).

[72] Code section 9812(a)(8)(A), ERISA section 712(a)(8)(A), and PHS Act section 2726(a)(8)(A).

[73] *Id.*

offering group or individual health insurance coverage submit comparative analyses, with respect to a plan or coverage, that involve potential MHPAEA violations, in response to complaints against a plan or coverage regarding potentially noncompliant NQTLs, and in any other instances that the Departments determine appropriate.[74] These comparative analyses must include:

(1) the specific plan or coverage terms or other relevant terms regarding the NQTLs and a description of all mental health and substance use disorder benefits and medical/surgical benefits to which each such term applies in each benefit classification;

(2) the factors used to determine how the NQTLs will apply to mental health or substance use disorder benefits and medical/surgical benefits;

(3) the evidentiary standards used to develop the identified factors, when applicable, provided that each factor shall be defined, and any other source or evidence relied upon to design and apply the NQTLs to mental health or substance use disorder benefits and medical/surgical benefits;

(4) the comparative analyses demonstrating that the processes, strategies, evidentiary standards, and other factors used to apply the NQTLs to mental health or substance use disorder benefits, as written and in operation, are comparable to, and are applied no more stringently than those used to apply the NQTLs to medical/surgical benefits in the benefits classification; and

(5) the specific findings and conclusions reached by the plan or issuer, including any results of the analyses that indicate that the plan or coverage is or is not in compliance with MHPAEA requirements.[75]

The CAA, 2021 further sets forth a process by which the Departments must evaluate the requested NQTL comparative analyses and enforce the comparative analyses requirements. If the relevant Department with jurisdiction over the group health plan (or health insurance coverage) determines that a plan or issuer has not provided sufficient information for the relevant Department to review the comparative analyses, the CAA, 2021 provides that the Departments shall specify the information the plan or issuer must submit to be responsive to the request.[76] In instances in which the Departments have reviewed the requested comparative analyses and determined that the plan or issuer is not in compliance with MHPAEA, the plan or issuer must specify the actions it will take to come into compliance and submit additional comparative analyses that demonstrate compliance not later than 45 days after the initial determination of noncompliance.[77] Following the 45-day corrective action period, if the relevant Department makes a final determination that the plan or issuer is still not in compliance, the plan or issuer must notify all individuals enrolled in the plan or coverage of this determination, not later than 7 days after such final determination.[78]

The CAA, 2021 also requires the Departments, after review of the comparative analyses, to share information on findings of compliance and noncompliance with the State where the plan is located or the State where the issuer is licensed to do business, in accordance with any information sharing agreement entered into with the State.[79] Additionally, as explained in more detail later in this preamble, the CAA, 2021 requires the Departments to submit annually to Congress and make publicly available a report summarizing the comparative analyses requested by the Departments. The report must state, in part, whether each plan or issuer submitted sufficient information to permit review; whether and why the plan or issuer is in compliance with MHPAEA; the specific information each plan or issuer needed to submit to allow for a review of their comparative analysis; and, for each plan or issuer the Departments determined not to be in compliance, specifications of the actions that must be taken to come into compliance.[80]

On April 2, 2021, the Departments issued FAQs Part 45 to provide guidance on the amendments to MHPAEA made by the CAA, 2021 and to promote compliance by plans and issuers. FAQs Part 45 underscores that, for a comparative analysis to be treated as sufficient under the CAA, 2021, it must contain a detailed, written, and reasoned explanation of the specific plan terms and practices at issue and include the bases for the plan's or issuer's conclusion that the NQTL complies with MHPAEA. As FAQs Part 45 explains, at a minimum, a sufficient NQTL comparative analysis must include a robust discussion of certain elements, including a clear description of the specific NQTL; plan terms; policies at issue; and identification of any factors, evidentiary standards, sources, strategies, and processes considered in the design and application of the NQTL and in determining which benefits, including both mental health and substance use disorder benefits and medical/surgical benefits, are subject to the NQTL. To the extent a plan or issuer defines any of the factors, evidentiary standards, strategies, or processes in a quantitative manner, its analysis should include the precise definitions used and any supporting sources. The analysis also should explain whether the plan or issuer imposes any variation in the application of a guideline or standard between mental health and substance use disorder benefits and medical/surgical benefits, and if so, should describe the processes and factors used for establishing that variation. The plan or issuer should provide a reasoned discussion, including citations or any specific evidence of its findings and conclusions, as to the comparability of the processes, strategies, evidentiary standards, factors, and sources identified within each affected classification and their relative stringency, both as written and in operation.

FAQs Part 45 highlights that a general statement of compliance by plans and issuers, coupled with a conclusory reference to broadly stated processes, strategies, evidentiary standards, or other factors is insufficient to meet the statutory requirements for an NQTL comparative analysis. Accordingly, a comparative analysis that consists of conclusory or generalized statements, without specific supporting evidence and detailed explanations, or the production of a large volume of documents without a clear explanation of how and why each document is relevant to the comparative analysis, fails to satisfy the statutory requirements.

In addition, FAQs Part 45 provides guidance as to the types of documents that plans and issuers should be prepared to make available to support the analysis and conclusions reached in their comparative analyses. This includes records documenting NQTL processes and detailing how the plan or

[74] Code section 9812(a)(8)(B)(i), ERISA section 712(a)(8)(B)(i), and PHS Act section 2726(a)(8)(B)(i).

[75] Code section 9812(a)(8)(A)(i)–(v), ERISA section 712(a)(8)(A)(i)–(v), and PHS Act section 2726(a)(8)(A)(i)–(v).

[76] Code section 9812(a)(8)(B)(ii), ERISA section 712(a)(8)(B)(ii), and PHS Act section 2726(a)(8)(B)(ii).

[77] Code section 9812(a)(8)(B)(iii)(I), ERISA section 712(a)(8)(B)(iii)(I), and PHS Act section 2726(a)(8)(B)(iii)(I).

[78] *Id.*

[79] Code section 9812(a)(8)(C)(iii), ERISA section 712(a)(8)(C)(iii), and PHS Act section 2726(a)(8)(C)(iii).

[80] Code section 9812(a)(8)(B)(iv), ERISA section 712(a)(8)(B)(iv), and PHS Act section 2726(a)(8)(B)(iv).

issuer applies NQTLs to both medical/surgical and mental health or substance use disorder benefits, documents and other information relevant to the factors identified, and samples of covered and denied mental health or substance use disorder and medical/surgical benefits claims. FAQs Part 45 also highlights several NQTLs that DOL anticipated focusing on in the near term.

FAQs Part 45 also notes that under the CAA, 2021, plans and issuers must make available their respective comparative analyses of NQTLs and other applicable information to the applicable State authority upon request. Additionally, plans and issuers must make the comparative analyses and other applicable information required by the CAA, 2021 available upon request to participants and beneficiaries in plans subject to ERISA and to participants, beneficiaries, and enrollees in all non-grandfathered group health plans and non-grandfathered group or individual health insurance coverage upon request in connection with an appeal of an adverse benefit determination. If a provider or other individual is acting as a patient's authorized representative, the provider or other authorized representative may request these documents.

E. Reports to Congress

DOL is required to send Congress a biennial report on MHPAEA implementation,[81] and the Departments are required to send Congress an annual report on NQTL comparative analyses reviews.[82] To satisfy these requirements, on January 25, 2022, the Departments issued the first report to Congress since the enactment of the CAA, 2021 (2022 MHPAEA Report to Congress).[83] The 2022 MHPAEA Report to Congress contains extensive descriptions of the Departments' MHPAEA enforcement efforts, outreach efforts, consumer and compliance assistance efforts, and guidance to interested parties, including information related to the requirement that plans and issuers perform and document comparative analyses with respect to the design and application of NQTLs.

Contemporaneously with these proposed rules, the Departments are issuing the second report to Congress since the enactment of the CAA, 2021, the MHPAEA Comparative Analysis Report to Congress, July 2023 (2023 MHPAEA Report to Congress).[84] The 2023 MHPAEA Report to Congress details efforts by the Departments to implement and enforce the amendments to MHPAEA made by the CAA, 2021. The 2023 MHPAEA Report to Congress focuses on the Departments' enforcement efforts regarding NQTLs during the second year of CAA, 2021 implementation, looks broadly at the 18-month period since plans and issuers were first required to make their comparative analyses and other applicable information available on request, discusses common deficiencies in comparative analyses submitted by plans and issuers, and explores examples of results that the Departments have achieved through enforcement.

The 2023 MHPAEA Report to Congress notes that nearly all of the comparative analyses reviewed by the Departments during the relevant time period contained insufficient information upon initial receipt and identifies common deficiencies in the comparative analyses prepared by plans and issuers. Specifically, many initial responders seemed unprepared to submit their comparative analyses upon request and some plans did not complete or start a comparative analysis until after one was requested. Some comparative analyses lacked specific supporting evidence, detailed explanations, or sufficient detail to draw meaningful comparisons. For example, many plans' comparative analyses failed to adequately explain whether or how factors were comparably applied to mental health and substance use disorder benefits and to medical/surgical benefits. Also, many plans and issuers provided supporting documents for which the relevance and probative value was not readily apparent.

Some plans also failed to identify the specific mental health or substance use disorder benefits and medical/surgical benefits or MHPAEA benefit classification to which an NQTL applied. Additionally, some comparative analyses failed to identify or define every relevant factor. In other instances, plans failed to demonstrate the application of identified factors in the design of an NQTL, and most comparative analyses failed to evaluate the relative stringency of how the NQTL was applied to mental health or substance use disorder benefits versus medical/surgical benefits. When data was included in a comparative analysis, the data often lacked meaning because the plan or issuer did not provide a description of its source, how the source was selected, or information about underlying calculations. Many comparative analyses for standards to participate in a network did not adequately address apparent differences in access standards for medical/surgical providers as opposed to mental health and substance use disorder providers, such as different time and distance standards or provider-to-member ratios.

F. MHPAEA Opt Out for Self-Funded Non-Federal Governmental Plans

Prior to the enactment of the Affordable Care Act, PHS Act section 2721(b)(2), as added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), permitted sponsors of self-funded, non-Federal governmental plans to elect to exempt those plans from (that is, ''opt out of'') any or all of the following requirements of title XXVII of the PHS Act:

1. Limitations on preexisting condition exclusion periods under PHS Act section 2701 (redesignated as section 2704 by the Affordable Care Act).

2. Requirements for special enrollment periods under PHS Act section 2701 (redesignated as section 2704 by the Affordable Care Act).

3. Prohibitions against discriminating against individual participants and beneficiaries based on health status (but not including provisions added by the Genetic Information Nondiscrimination Act of 2008) under PHS Act section 2702 (redesignated as section 2705 by the Affordable Care Act).

4. Standards relating to benefits for newborns and mothers under PHS Act section 2704 (redesignated as section 2725 by the Affordable Care Act).

5. Parity in the application of certain limits to mental health and substance use disorder benefits (including requirements of MHPAEA) under PHS Act section 2705 (redesignated as section 2726 by the Affordable Care Act).

6. Required coverage for reconstructive surgery following mastectomies under PHS Act section

[81] ERISA section 712(f).

[82] Section 203 of the CAA, 2021 (Pub. L. 116–260, 134 Stat. 1182 (Dec. 27, 2020)). In addition, the Departments were required to send Congress an annual report on complaints and investigations concerning compliance with the requirements of MHPAEA from 2017 until 2021. *See* section 13003 of the 21st Century Cures Act (Cures Act), Public Law 114–255, 130 Stat. 1033 (Dec. 13, 2016), as amended by the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act, Public Law 115–271, 132 Stat. 3894 (Oct. 24, 2018).

[83] 2022 MHPAEA Report to Congress, available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2022-realizing-parity-reducing-stigma-and-raising-awareness.pdf.*

[84] 2023 MHPAEA Report to Congress, July 2023, available at *www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2023-mhpaea-comparative-analysis.pdf* and *https://www.cms.gov/cciio/resources/forms-reports-and-other-resources#mental-health-parity.*

2706 (redesignated as section 2727 by the Affordable Care Act).

7. Coverage of dependent students on a medically necessary leave of absence under PHS Act section 2707 (redesignated as section 2728 by the Affordable Care Act).

The Affordable Care Act redesignated PHS Act section 2721 as section 2722 and amended PHS Act section 2722(a)(2) to allow sponsors of self-funded, non-Federal governmental plans to only opt out of requirements categories 4–7 listed above.

In response to the Affordable Care Act amendments, HHS issued guidance on September 21, 2010, indicating that, for plan years beginning on or after September 23, 2010, plan sponsors of non-collectively bargained plans could elect to be exempt only from requirements categories 4–7 listed above and that requirements categories 1–3 were no longer available for exemption.[85] Group health plans maintained pursuant to a collective bargaining agreement ratified before March 23, 2010, and that had been exempted from any of the first three requirements categories listed above, would not have to come into compliance with those requirements categories until the commencement of the first plan year following the expiration of the last plan year governed by the collective bargaining agreement.

On March 21, 2014, HHS published proposed regulations in the **Federal Register** that proposed to revise the provisions of 45 CFR 146.180 to reflect the amendments made by the Affordable Care Act, consistent with the September 21, 2010, guidance.[86] On May 27, 2014, HHS finalized those proposed regulations with modifications related to how opt out elections must be filed.[87]

The CAA, 2023,[88] enacted on December 29, 2022, eliminated the election for self-funded, non-Federal governmental plans to opt out of MHPAEA.[89] Specifically, PHS Act section 2722(a)(2), as amended by the CAA, 2023, provides that no election to opt out of compliance with the requirements of MHPAEA may be made on or after December 29, 2022 (the date of enactment of the CAA, 2023) and that generally no such election with respect to MHPAEA expiring on or after June 27, 2023 (the date that is 180 days after the date of enactment of the CAA, 2023), may be renewed.[90] In addition, PHS Act section 2722(a)(2), as amended by the CAA, 2023, includes an exception for certain collectively bargained plans. Specifically, a self-funded, non-Federal governmental plan that is subject to multiple collective bargaining agreements of varying lengths and that has a MHPAEA opt-out election in effect on December 29, 2022, that expires on or after June 27, 2023, may extend such election until the date on which the term of the last collective bargaining agreement expires.[91]

HHS issued a Bulletin on June 7, 2023, that informs self-funded, non-Federal governmental plans and other interested parties about the CAA, 2023 amendments to PHS Act section 2722(a)(2), outlines when plans that currently opt out of compliance with MHPAEA are required to come into compliance with these requirements, and specifies the form and manner for submission of opt-out renewal election requests [92] to operationalize the special rule for certain collectively bargained plans.[93]

II. Overview of the Proposed Rules—Departments of the Treasury, Labor, and HHS

The Departments are proposing these rules to further MHPAEA's fundamental goal of ensuring that limitations on mental health and substance use disorder benefits provided by group health plans or health insurance issuers offering group or individual health insurance coverage are no more restrictive than the predominant limitations applicable to substantially all medical/surgical benefits, and to further implement important new statutory requirements to ensure that plans and issuers document their NQTL comparative analyses and other applicable information to demonstrate whether the processes, strategies, evidentiary standards, and other factors used to apply an NQTL to mental health and substance use disorder benefits are comparable to, and applied no more stringently than, those used to apply the limitation with respect to medical/surgical benefits in the same benefit classification. The goal of these proposed rules is to ensure that individuals with mental health conditions and substance use disorders can benefit from the full protections afforded to them under MHPAEA, while offering clear guidance to plans and issuers on how to comply with MHPAEA's requirements.

These proposed rules would be codified in 26 CFR part 54, 29 CFR part 2590, and 45 CFR parts 146 and 147. Specifically, these proposed rules would amend certain provisions of existing MHPAEA regulations at 26 CFR 54.9812–1, 29 CFR 2590.712, and 45 CFR 146.136 to incorporate new and revised definitions of key terms, as well as to specify additional steps that plans and issuers must take to meet their obligations under MHPAEA. These proposed rules also would add a new regulation at 26 CFR 54.9812–2, 29 CFR 2590.712–1, and 45 CFR 146.137 establishing minimum standards for developing NQTL comparative analyses to assess whether an NQTL, as written and in operation, complies with MHPAEA's requirements. In addition, these proposed rules would set forth the content elements of comparative analyses and the timeframe for plans and issuers to respond to a request from the Departments to submit their comparative analyses. Additionally, HHS proposes an amendment to 45 CFR 147.160 to specify that proposed regulations at 45 CFR 146.137 would apply to individual health insurance coverage offered by a health insurance issuer in the same manner and to the same extent that this proposed provision would apply to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the large group market.[94] Consistent with the existing text at 45 CFR 147.160(a), HHS also proposes to extend the same requirements and framework outlined in the proposed amendments to 45 CFR

[85] Office of Consumer Information and Insurance Oversight, Amendments to the HIPAA opt-out provision (formerly section 2721(b)(2) of the Public Health Service Act) made by the Affordable Care Act (Sept. 21, 2010), available at *www.cms.gov/CCIIO/Resources/Files/Downloads/opt_out_memo.pdf*.

[86] 79 FR 15808 (Mar. 21, 2014).

[87] 79 FR 30240 (May 27, 2014).

[88] Public Law 117–328, 136 Stat. 4459.

[89] Division FF, Title I, Subtitle C, Chapter 3, sec. 1321, Public Law 117–328, 136 Stat. 4459. As a result of the CAA, 2023 amendments to PHS Act section 2722(a)(2), self-funded, non-Federal governmental plan sponsors may opt out of only the following three PHS Act requirement categories: Standards relating to benefits for newborns and mothers (PHS Act section 2725), Required coverage for reconstructive surgery following mastectomies (PHS Act section 2727), and Coverage for dependent students on a medically necessary leave of absence (PHS Act section 2728).

[90] PHS Act section 2722(a)(2)(F)(i).

[91] PHS Act section 2722(a)(2)(F)(ii).

[92] *See* 45 CFR 146.180(b) and (f).

[93] Center for Consumer Information and Insurance Oversight, Insurance Standards Bulletin Series—INFORMATION, Sunset of MHPAEA opt-out provision for self-funded, non-Federal governmental group health plans (June 7, 2023), available at *https://www.cms.gov/files/document/hipaa-opt-out-bulletin.pdf*.

[94] Non-grandfathered health insurance coverage offered by a health insurance issuer in connection with a group health plan in the small group market is required to comply with the requirements under PHS Act section 2726 to satisfy the requirement to provide coverage for mental health and substance use disorder services, including behavioral health treatment, as part of EHB, and as such would also be required to comply with the comparative analysis requirements proposed under 45 CFR 146.137. *See* 45 CFR 156.115(a)(3).

146.136 in these proposed rules to individual health insurance coverage in the same manner and to the same extent as such proposed amendments, if finalized, would apply to group health insurance coverage. Finally, HHS also proposes amendments to 45 CFR 146.180 to reflect the sunset of the election option for self-funded, non-Federal governmental plans to opt out of compliance with MHPAEA, consistent with changes made by the CAA, 2023 to PHS Act section 2722(a)(2).[95]

The Departments are soliciting public comment on all aspects of these proposed rules.

A. Amendments to Existing Regulations at 26 CFR 54.9812–1, 29 CFR 2590.712, and 45 CFR 146.136

1. Purpose Section—26 CFR 54.9812–1(a)(1), 29 CFR 2590.712(a)(1), and 45 CFR 146.136(a)(1)

In general, the fundamental purpose of MHPAEA, its existing implementing regulations, and these proposed rules is to ensure that participants and beneficiaries in a group health plan or in group health insurance coverage offered by a health insurance issuer that offers mental health or substance use disorder benefits are not subject to greater restrictions, such as more restrictive lifetime or annual dollar limits, financial requirements, or treatment limitations, when seeking those benefits than when they seek medical/surgical benefits under the terms of the plan or coverage. This should serve as the guiding principle for group health plans and health insurance issuers offering group health insurance coverage as they work to comply with MHPAEA and its implementing regulations. While MHPAEA generally does not mandate coverage of mental health or substance use disorder benefits, these proposed rules aim to better ensure that plans and issuers that cover such benefits implement MHPAEA in accordance with its express terms and fundamental purpose.

Accordingly, the Departments propose to add a purpose section to the regulations, specifying that a fundamental purpose of MHPAEA and its implementing regulations is to ensure that participants and beneficiaries covered under a plan or health insurance coverage that offers mental health or substance use disorder benefits are not subject to more restrictive lifetime or annual dollar limits, financial requirements, or treatment limitations with respect to covered mental health and substance use disorder benefits than the predominant dollar limits, financial requirements, or treatment limitations that are applied to substantially all medical/surgical benefits covered by the plan or coverage.[96] The purpose section would further state that in complying with the provisions of MHPAEA and its implementing regulations, plans and issuers must not design or apply financial requirements and treatment limitations that impose a greater burden on access (that is, are more restrictive) to mental health and substance use disorder benefits under the plan or coverage than plans and issuers impose on access to generally comparable medical/surgical benefits. Further, these proposed rules provide that MHPAEA and its implementing regulations should be interpreted in a manner that is consistent with this purpose. The Departments seek comment on the proposed addition of a purpose section to the implementing regulations and the proposed language.

2. Meaning of Terms—26 CFR 54.9812–1(a)(2), 29 CFR 2590.712(a)(2), and 45 CFR 146.136(a)(2)

The Departments propose to amend the 2013 final regulations to revise several existing definitions, add new definitions of key terms, and add language to specify that, except where the context clearly indicates otherwise, the definitions in 26 CFR 54.9812–1(a)(2), 29 CFR 2590.712(a)(2), and 45 CFR 146.136(a)(2) would also apply to the new proposed comparative analysis requirements set forth in proposed 26 CFR 54.9812–2, 29 CFR 2590.712–1, and 45 CFR 146.137, which are discussed in more detail later in this preamble.[97]

Under MHPAEA, the term ''medical or surgical benefits'' means benefits with respect to medical or surgical services, as defined under the terms of the plan or coverage.[98] This statutory definition further clarifies that the term does not include mental health or substance use disorder benefits.[99] The terms ''mental health benefits'' and ''substance use disorder benefits'' are defined by the statute to mean benefits with respect to services for mental health conditions or substance use disorders, respectively, as defined under the terms of the plan and in accordance with applicable Federal and State law.[100] The definitions of all three of these terms included in the 2013 final regulations further provide that any condition defined by the plan or coverage as being or as not being a medical/surgical condition, mental health condition, or substance use disorder, respectively, must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM), the most current version of the International Classification of Diseases (ICD), or State guidelines).

The Departments have received questions from interested parties about what it means for a definition of a mental health condition or substance use disorder to be ''consistent with'' generally recognized independent standards of current medical practice, and whether, for purposes of MHPAEA, a condition is a medical condition, a mental health condition, or a substance use disorder when State insurance law and generally recognized independent standards of current medical practice conflict. In response to these requests for further guidance, the Departments propose to amend the existing regulatory definitions of the terms ''medical/surgical benefits,'' ''mental health benefits,'' and ''substance use disorder benefits'' to address these questions and help delineate more clearly what is a medical/surgical benefit, a mental health benefit, or a substance use disorder benefit for purposes of complying with MHPAEA.

Specifically, the Departments propose to amend the definition of the term ''medical/surgical benefits'' to mean benefits with respect to items or services for medical conditions or surgical procedures, as defined under the terms of the group health plan (or health insurance coverage offered by an issuer in connection with such a plan) and in accordance with applicable Federal and State law, but does not include mental health benefits or substance use disorder benefits. These proposed rules

[95] Division FF, Title I, Subtitle C, Chapter 3, sec. 1321, Public Law 117–328, 136 Stat. 4459 (Dec. 29. 2022).

[96] While the Departments recognize the relevant statutory text for dollar limits does not use the term ''predominant'' and different rules apply, the purpose of MHPA 1996 was similar and therefore the provisions for dollar limits should generally be read and applied in a similar manner. *See, e.g.,* Government Accountability Office (GAO), Mental Health Parity Act, May 2000, at p. 13, available at *https://www.gao.gov/assets/hehs-00-95.pdf* (''To help address the discrepancies in coverage between mental and other illnesses, the Congress passed the Mental Health Parity Act of 1996.'').

[97] To accommodate the proposed addition of the ''purpose'' provision in paragraph (a)(1), these proposed rules would also redesignate the definitions from paragraph (a) to paragraph (a)(2) of 26 CFR 54.9812–1, 29 CFR 2590.712, and 45 CFR 146.136.

[98] Code section 9812(e)(3), ERISA section 712(e)(3), and PHS Act section 2726(e)(3).

[99] *Id.*

[100] *See* Code section 9812(e)(4)–(5), ERISA section 712(e)(4)–(5), and PHS Act section 2726(e)(4)–(5).

would also amend this regulatory definition of ''medical/surgical benefits'' to provide that, notwithstanding the first sentence, any condition or procedure defined by the plan or coverage as being or not being a medical condition or surgical procedure must be defined consistent with generally recognized independent standards of current medical practice (for example, the most current version of the ICD). To the extent that generally recognized independent standards of current medical practice do not address whether a condition or procedure is a medical condition or surgical procedure, plans and issuers may define the condition or procedure as medical/surgical benefits, as long as such definitions are in accordance with applicable Federal and State law.

The Departments propose to remove the reference to State guidelines in the definition of medical/surgical benefits. This proposed amendment is more consistent with the statute, and importantly, would no longer allow plans and issuers to rely on standards that are not applicable to the plan or coverage at issue in applying financial requirements or treatment limitations to mental health and substance use disorder benefits.[101] Generally recognized independent standards of current medical practice more accurately align with how a plan should characterize benefits for purposes of compliance with MHPAEA, and this provision would minimize situations where contradictions with State guidelines create conflicts and improperly limit the protections under MHPAEA.

The Departments propose to make similar changes to the definitions of ''mental health benefits'' and ''substance use disorder benefits'' by amending the first sentences of these definitions, removing the reference to State guidelines, and clarifying that, notwithstanding the terms of a plan or coverage, any condition or disorder defined by the plan or coverage as being or not being a mental health condition or a substance use disorder must be defined to be consistent with generally recognized independent standards of current medical practice. Specifically, under these proposed rules, to be consistent with generally recognized independent standards of current medical practice, the plan's or coverage's definition of ''mental health benefits'' must include all conditions covered under the plan or coverage, except for substance use disorders, that fall under any of the diagnostic categories listed in the mental, behavioral, and neurodevelopmental disorders chapter (or equivalent chapter) of the most current version of the ICD or that are listed in the most current version of the DSM. Similarly, the plan's or coverage's definition of ''substance use disorders'' must include all disorders covered under the plan or coverage that fall under any of the diagnostic categories listed as a mental or behavioral disorder due to psychoactive substance use (or equivalent category) in the mental, behavioral, and neurodevelopmental disorders chapter (or equivalent chapter) of the most current version of the ICD or that are listed as a Substance-Related and Addictive Disorder (or equivalent category) in the most current version of the DSM.[102] Similar to the proposed revisions to the definition of ''medical/surgical benefits,'' the proposed amended definitions of ''mental health benefits'' and ''substance use disorder benefits'' also provide that, to the extent generally recognized independent standards of current medical practice do not address whether a condition or disorder is a mental health condition or substance use disorder, respectively, plans and issuers may define the condition or disorder in accordance with applicable Federal and State law.

The ICD would be defined as the World Health Organization's International Classification of Diseases adopted by HHS through 45 CFR 162.1002 or successor regulations, and the DSM would be defined as the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. Because the proposed amendments to the definitions of ''medical/surgical benefits,'' ''mental health benefits,'' and ''substance use disorder benefits,'' refer to the most current version of the ICD or DSM, respectively, these proposed rules also explain how to determine which version is the most current as of a particular date. This serves to provide plans and issuers with clarity on when they would be required to begin to rely on a new version of the ICD or DSM after it is released, and sufficient time after the adoption of an updated version of the ICD or DSM to ensure that the terms of their plan or coverage are consistent with any changes made from the previous version. The definitions would specify that, for purposes of compliance with these proposed rules, the most current version of the ICD or DSM, respectively, would be that which is applicable no earlier than on the date that is 1 year before the first day of the applicable plan year.

These proposed rules also would permit plans and issuers to use a more current version of the ICD or DSM than the version in effect 1 year before the first day of the applicable plan year. In addition, the Departments recognize that future versions of the ICD or DSM may include revisions to the categories of conditions or disorders or chapters listed in the proposed amended definitions for ''mental health benefits'' and ''substance use disorder benefits,'' which could affect the characterization of a benefit under MHPAEA. Therefore, the proposed amended definitions for these two terms also refer to ''equivalent categories'' and ''equivalent chapters'' to help plans and issuers understand how they would apply the proposed definitions, if finalized, and how to implement such changes if they are made in the future. The Departments request comments on this aspect of these proposed amended definitions.

To ensure parity between mental health and substance use disorder benefits and medical/surgical benefits, it is critical that plans and issuers define mental health conditions and substance use disorders in a manner consistent with the purposes of MHPAEA. While plans and issuers have some discretion in defining mental health benefits and substance use disorder benefits, this discretion must be exercised in a manner that comports with generally recognized independent standards of current medical practice. Moreover, the proposed amended definitions for ''medical/surgical benefits,'' ''mental health benefits,'' and ''substance use disorder benefits'' specify that plans and issuers may use applicable State law to inform their definitions, but only to the extent that those laws are consistent with and do not contradict generally recognized independent standards of current medical practice (or to the extent these standards do not address whether a condition or disorder is a medical condition or surgical procedure or a mental health condition or substance use disorder). Under both the

[101] For example, some self-insured ERISA plans have argued that they can rely on State insurance law definitions that characterize a particular condition as a medical condition, mental health condition, or substance use disorder based on State guidelines despite the fact that State insurance law is generally not applicable to self-insured ERISA plans and such plans do not otherwise consistently comply with State insurance law.

[102] Substance use disorders that fall under any of the diagnostic categories listed in the mental and behavioral health disorders chapter of the most current version of the ICD or that are listed in the most current version of the DSM would be excluded from the definition of the term ''mental health benefits'' because they would be included in the definition of the term ''substance use disorder benefits.''

2013 final regulations and these proposed rules, plans and issuers must be prepared to provide supporting documentation to demonstrate that the way the plan or issuer has defined a condition or disorder for purposes of MHPAEA is consistent with generally recognized independent standards of current medical practice. The Departments solicit comments on whether any additional clarification is needed on how State law may interact with the proposed amended definitions for these key terms.

As discussed earlier in this section of the preamble, the Departments are proposing these amendments to the definitions of the terms ''medical/surgical benefits,'' ''mental health benefits,'' and ''substance use disorder benefits'' in part to ensure that the use of State laws does not prevent the application of MHPAEA's protections with respect to conditions or disorders that are recognized as mental health conditions and substance use disorders under generally recognized independent standards of current medical practice. The Departments recognize that States may enact various laws for different purposes. Therefore, the Departments are proposing to make clear that when a plan or issuer relies upon a State law to inform its definitions for purposes of MHPAEA, the plan or issuer must ensure that definitions operate to apply MHPAEA's protections to mental health conditions and substance use disorders, as they are generally defined by the medical community. The Departments also clarify that under the proposed framework, to the extent a State law or generally recognized independent standards of current medical practice define a condition or disorder as a mental health condition or substance use disorder, plans and issuers must treat all benefits for the condition or disorder as mental health benefits or substance use disorder benefits, respectively, for purposes of analyzing parity and compliance with MHPAEA. The Departments solicit comments on any potential challenges of applying MHPAEA to all benefits for a mental health condition or substance use disorder where items and services can be delivered for both medical conditions or surgical procedures and mental health conditions or substance use disorders, and whether additional clarifications or modifications to the proposed definitions are necessary.

Interested parties also have requested that the Departments confirm whether specific conditions are mental health conditions for purposes of MHPAEA. Under these proposed rules, as under the existing MHPAEA regulations and section 13007 of the Cures Act,[103] the Departments confirm that eating disorders, such as anorexia nervosa, bulimia nervosa, and binge-eating disorder, are mental health conditions under generally recognized independent standards of current medical practice.[104] Therefore, benefits for treatment of eating disorders are mental health benefits for purposes of MHPAEA and may not be defined as medical/surgical benefits under a plan or coverage.[105]

Similarly, in response to questions from interested parties, these proposed rules would make clear that, for purposes of MHPAEA, ASD is a mental health condition under generally recognized independent standards of current medical practice.[106] Therefore, under the proposed amended definition and framework established in these proposed rules, if a plan or issuer generally provides benefits for ASD, ASD may not be defined by the plan or issuer as a medical/surgical condition. In addition, the plan or issuer may not impose any financial requirements or treatment limitations in a classification on benefits for ASD treatment that are more restrictive than the predominant financial requirements or treatment limitations that apply to substantially all medical/surgical benefits in the classification. The plan or issuer also may not impose any financial requirements or treatment limitations, including exclusions for Applied Behavior Analysis (ABA) therapy (one of the primary treatments for ASD), that are separately applicable to ASD benefits in a classification and not to any medical/surgical benefits in the same classification. The Departments propose to incorporate new examples illustrating the application of MHPAEA to eating disorders and ASD, as discussed later in this preamble. The Departments solicit comments on other specific mental health conditions or substance use disorders that may warrant additional clarification for purposes of analyzing parity and compliance with MHPAEA.

In addition to the proposals outlined above to amend certain existing definitions, these proposed rules also would add several new definitions to codify the meaning of terms used in paragraph (c)(4)(i) of the 2013 final regulations, which requires the processes, strategies, evidentiary standards, and other factors used in applying an NQTL to mental health or substance use disorder benefits to be comparable to, and no more stringently applied than those used to apply the NQTL to medical/surgical benefits in the same classification. These terms and the standard were incorporated into MHPAEA's statutory language in the amendments made by the CAA, 2021.[107] The Departments propose to add new definitions for the terms ''processes,'' ''strategies,'' ''evidentiary standards,'' and ''factors'' to the list of definitions for key terms proposed to be included in 26 CFR 54.9812–1(a)(2), 29 CFR 2590.712(a)(2), and 45 CFR 146.136(a)(2) of these proposed rules. These new definitions would provide clarity to plans and issuers, as well as to State regulators and participants and beneficiaries, and help facilitate compliance with the provisions of these proposed rules related to NQTLs and the development of sufficient comparative analyses required under the CAA, 2021 and proposed 26 CFR 54.9812–2, 29 CFR 2590.712–1, and 45 CFR 146.137. Although the Departments have issued guidance with examples that demonstrate how these terms apply, interested parties have stated that it can be difficult to determine what constitutes relevant processes, strategies, evidentiary standards, and other factors. The Departments solicit comments on these proposed definitions, including any alternate definitions or additional clarifications that should be considered.

The Departments propose to add a definition of the term ''evidentiary standards'' to mean any evidence, sources, or standards that a group health plan (or health insurance issuer offering coverage in connection with such a plan) considered or relied upon in designing or applying a factor with respect to an NQTL, including specific benchmarks or thresholds. The proposed definition further provides that evidentiary standards may be empirical, statistical, or clinical in nature, and include sources acquired or originating from an objective third party, such as recognized medical literature, professional standards and

[103] Section 13007 of the Cures Act states that, if a plan or an issuer offering group or individual health insurance coverage provides coverage for eating disorder benefits, including residential treatment, such group health plan or health insurance issuer shall provide such benefits consistent with the requirements of MHPAEA.

[104] *See, e.g.,* Diagnostic and Statistical Manual of Mental Disorders (5th ed.), section II, Feeding and Eating Disorders; ICD–10, Chapter 05.

[105] The Departments previously clarified that eating disorders are mental health conditions, and therefore treatment of an eating disorder is a mental health benefit, in FAQs Part 38, Q1. *See* DSM (5th ed.), section II, Feeding and Eating Disorders.

[106] *See* DSM (5th ed.), section II, Autism Spectrum Disorder.

[107] *See, e.g.,* Code section 9812(a)(8)(A), ERISA section 712(a)(8)(A), and PHS Act section 2726(a)(8)(A).

protocols (which may include comparative effectiveness studies and clinical trials), published research studies, payment rates for items and services (such as publicly available databases of the ''usual, customary, and reasonable'' rates paid for items and services), and clinical treatment guidelines. The proposed definition provides that evidentiary standards would also include internal plan or issuer data, such as claims or utilization data or criteria for assuring a sufficient mix and number of network providers, and benchmarks or thresholds, such as measures of excessive utilization, cost levels, time or distance standards, or network participation percentage thresholds.

Under these proposed rules, evidentiary standards generally would not be considered factors, but instead would be considered or relied upon in designing or applying a factor. Under the framework established in the 2013 final regulations, the terms within the phrase ''processes, strategies, evidentiary standards, and other factors'' were treated as having overlapping meanings, and specifically, the term ''other factors'' was treated as a catch-all. The CAA, 2021 codified in the statute the phrase ''processes, strategies, evidentiary standards, and other factors.'' [108] However, the CAA, 2021 added to MHPAEA other references to factors and evidentiary standards that indicate the drafters meant to distinguish between factors and evidentiary standards. For example, Code section 9812(a)(8)(A)(iii), ERISA section 712(a)(8)(A)(iii), and PHS Act 2726(a)(8)(A)(iii) refer to the evidentiary standards *that are used for* the factors to determine that an NQTL will apply to benefits, and those provisions go on to distinguish between factors and any other sources or evidence relied upon to design or apply an NQTL. The proposed definition of evidentiary standards is consistent with the use of these terms by Congress in the CAA, 2021 amendments to MHPAEA and the Departments' goal of clarifying the meanings of these terms to help the regulated community comply with MHPAEA's requirements. The Departments request comments on this approach, including whether there are any circumstances under which an evidentiary standard should also be considered a factor under these proposed rules (such as, for example, when the plan or issuer only relies upon a single evidentiary standard to design or apply an NQTL, and no additional processes, strategies, or other factors).

The Departments also propose to clarify that the definition of the term ''factors'' should be read broadly, so that factors are all information, including processes and strategies (but generally not evidentiary standards), that a group health plan (or health insurance issuer offering coverage in connection with such a plan) considered or relied upon to design an NQTL or used to determine whether or how the NQTL applies to benefits under the plan or coverage. The proposed definition of the term ''factors'' also would include information (but generally not evidentiary standards) that the plan or issuer considered but rejected, consistent with previous guidance on MHPAEA in the context of the documents or plan information the Departments consider relevant to a compliance determination.[109] The proposed definition also provides examples of factors, which include, but are not limited to, provider discretion in determining diagnosis or type or length of treatment; clinical efficacy of any proposed treatment or service; licensing and accreditation of providers; claim types with a high percentage of fraud; quality measures; treatment outcomes; severity or chronicity of condition; variability in the cost of an episode of treatment; high cost growth; variability in cost and quality; elasticity of demand; and geographic location.

Under these proposed rules, factors would include processes and strategies, but the Departments note that there may be factors that do not satisfy the proposed definitions of ''processes'' or ''strategies.'' By defining the term ''factor'' broadly, the Departments intend to capture any information used to design or apply an NQTL (other than evidentiary standards generally), regardless of whether a plan or issuer believes that information could also be characterized as a process or a strategy, as those terms are proposed to be defined under these proposed rules.

Additionally, the Departments propose to define ''processes'' and ''strategies'' as types of factors, in a manner that makes clear the differences between the two terms as they relate to the design and application of an NQTL. Specifically, the Departments would define ''processes'' as relating to the application of an NQTL, while ''strategies'' would relate to the design of an NQTL.

The Departments therefore propose to define ''processes'' to mean actions, steps, or procedures that a plan or issuer uses to apply an NQTL. ''Processes'' would include requirements established by the plan or issuer for a participant or beneficiary to access benefits, including through actions by a participant's or beneficiary's authorized representative, or a provider or facility. The proposed definition further provides that processes include, but are not limited to: procedures to submit information to authorize coverage for an item or service prior to receiving the benefit or while treatment is ongoing (including requirements for peer or expert clinical review of that information); provider referral requirements; and the development and approval of a treatment plan. The proposed definition also provides that processes include the specific procedures used by staff or other representatives of a plan or issuer (or the service provider of a plan or issuer) to administer the application of NQTLs, such as: how a panel of staff members applies the NQTL (including the qualifications of staff involved, number of staff members allocated, and time allocated); consultations with panels of experts in applying the NQTL; and reviewer discretion in adhering to criteria hierarchy when applying an NQTL.

These proposed rules would define ''strategies'' as practices, methods, or internal metrics that a plan or issuer considers, reviews, or uses to design an NQTL. The proposed definition provides that examples of strategies include, but are not limited to: the development of the clinical rationale used in approving or denying benefits; deviation from generally accepted standards of care; the selection of information (such as from medical or clinical guidelines) deemed reasonably necessary to make a medical necessity determination; reliance on treatment guidelines or guidelines provided by third-party organizations; and rationales used in selecting and adopting certain threshold amounts, professional protocols, and fee schedules. These proposed rules would further specify that strategies also include the creation and composition of the staff or other representatives of a plan or issuer (or the service provider of a plan or issuer) that deliberates, or otherwise makes decisions, on the design of NQTLs, including the plan's decisions related to

[108] Code section 9812(a)(7)(B)(ii)(II) and (8)(A)(iv), ERISA section 712(a)(7)(B)(ii)(II) and (8)(A)(iv), and PHS Act section 2726(a)(7)(B)(ii)(II) and (8)(A)(iv).

[109] *See* FAQs Part 31, Q9, which states that a plan must provide documents and plan information to a participant or beneficiary, or their authorized representative, including the specific underlying processes, strategies, evidentiary standards, and other factors (including, but not limited to, all evidence) considered by the plan (including factors that were relied upon and were rejected) in determining that the NQTL will apply to a particular mental health and substance use disorder benefit or any medical/surgical benefits within the benefit classification at issue.

qualifications of staff involved, number of staff members allocated, and time allocated; breadth of sources and evidence considered; consultations with panels of experts in designing the NQTL; and the composition of the panels used to design an NQTL.

To illustrate the interaction of the definitions of these terms, a plan might rely on various combinations of processes, strategies, evidentiary standards, and other factors in designing and applying a prior authorization NQTL for in-network, non-hospital-based, inpatient/residential facilities for non-emergency medical/surgical or mental health or substance use disorder treatment. For example, the *strategies* used by the plan to design the NQTL could include the development of the clinical rationales the plan used in determining when to approve or deny benefits for the facility, and the composition of the staff of the plan that chose what information would be deemed necessary to determine whether a participant or beneficiary has an immediate, clinically valid need for treatment at the facility. The *processes* the plan used in applying the NQTL could include the specific steps a participant or beneficiary (or their authorized representative, including their provider or the facility) would need to take to obtain prior authorization, such as obtaining a written treatment plan. The processes would also include the procedures used by staff or other representatives of the plan (or the service provider of the plan) in determining whether a particular request for prior authorization would be approved. These processes and strategies would also be considered *factors,* as would the licensing and accreditation requirements for non-hospital-based, inpatient/residential facilities and the severity or chronicity of a patient's condition when they are seeking treatment at such a facility. Finally, the *evidentiary standards* used to design or apply the factors would include, for example, the benchmarks or thresholds the plan uses to inform the number of days of treatment at the facility that would be authorized at one time, as well as published research studies on the efficacy of the treatment in this particular facility setting.

Finally, the Departments propose to amend the definition of ''treatment limitation'' to clarify that the illustrative list of NQTLs to which the definition refers is non-exhaustive, and to amend the last sentence to state that a complete exclusion of all benefits for a particular condition or disorder is not a treatment limitation for purposes of this definition. By changing the existing reference in the definition from a ''permanent'' exclusion to a ''complete'' exclusion, the proposed amended definition of ''treatment limitation'' would better reflect a plan's or issuer's ability to amend the terms of their plan or coverage and affirm that this part of the definition refers to an exclusion of all benefits for a particular condition or disorder.

While NQTLs are generally defined as treatment limitations that are not expressed numerically, the application of an NQTL in a numerical way does not modify its nonquantitative character simply because the NQTL sometimes involves numerical standards. For example, standards to participate in a network would be NQTLs because such standards are treatment limitations that typically are not expressed numerically. Nevertheless, these standards sometimes rely on or involve numerical standards, such as reimbursement rates. In this case, the numerical expression of a reimbursement rate does not modify the nonquantitative character of the standards related to network composition. Therefore, such standards would still be evaluated in accordance with the rules for NQTLs under the statute and these proposed rules.

The Departments solicit comments on all aspects of these proposed amendments to existing definitions, as well as the new proposed definitions. The Departments also request comment on what additional clarifications or examples might be helpful in understanding these amended and new proposed defined terms.

3. Nonquantitative Treatment Limitations—26 CFR 54.9812–1(c)(4), 29 CFR 2590.712(c)(4), and 45 CFR 146.136(c)(4)

As explained earlier in this preamble, the Departments are proposing changes that are designed to prevent plans and issuers from designing and implementing NQTLs that impose greater limits on access to mental health and substance use disorder benefits as compared to medical/surgical benefits. These proposed rules would add additional requirements for plans and issuers that apply NQTLs with respect to mental health and substance use disorder benefits, to prevent the imposition of a greater burden on participants and beneficiaries accessing those benefits, while preserving the ability of plans and issuers to impose those NQTLs to the extent they are consistent with generally recognized independent professional medical or clinical standards or standards related to fraud, waste, and abuse. Subject to those two narrow exceptions, these proposed rules provide that plans and issuers would not be permitted to impose an NQTL unless (1) the NQTL is no more restrictive as applied to mental health and substance use disorder benefits than to medical/surgical benefits (also referred to in this preamble as the no more restrictive requirement);[110] (2) the plan or issuer satisfies requirements related to the design and application of the NQTL (also referred to in this preamble as the design and application requirements);[111] and (3) the plan or issuer collects, evaluates, and considers the impact of relevant data on access to mental health and substance use disorder benefits relative to access to medical/surgical benefits; and subsequently takes reasonable action as necessary to address any material differences in access shown in the data to ensure compliance with MHPAEA (also referred to in this preamble as the relevant data evaluation requirements).[112]

The proposed rules do not require or suggest a particular sequence to the analysis for evaluating compliance, and no inferences should be drawn from the order in which each of these independent requirements appear in the proposed regulatory text. For example, a plan or issuer designing or applying an NQTL with respect to mental health or substance use disorder benefits could begin analyzing compliance with MHPAEA by looking at the design and application requirements under these proposed rules before fully evaluating whether the NQTL with respect to mental health or substance use disorder benefits complies with the no more restrictive requirement. Additionally, if a plan or issuer, in the process of complying with the relevant data evaluation requirements, identifies material differences in access to mental health and substance use disorder benefits as compared to medical/surgical benefits, those differences would be considered a strong indicator that the plan or issuer violated the proposed no more restrictive requirement or the design and application requirements.[113] In such

[110] Proposed 26 CFR 54.9812–1(c)(4)(i), 29 CFR 2590.712(c)(4)(i), and 45 CFR 146.136(c)(4)(i).

[111] Proposed 26 CFR 54.9812–1(c)(4)(ii), 29 CFR 2590.712(c)(4)(ii), and 45 CFR 146.136(c)(4)(ii).

[112] Proposed 26 CFR 54.9812–1(c)(4)(iv), 29 CFR 2590.712(c)(4)(iv), and 45 CFR 146.136(c)(4)(iv).

[113] *But see* the special rule for NQTLs related to network composition at proposed 26 CFR 54.9812–1(c)(4)(iv)(C), 29 CFR 2590.712(c)(4)(iv)(C), and 45 CFR 146.136(c)(4)(iv)(C), which states that, when designing and applying one or more NQTLs related to network composition standards, a plan fails to meet the no more restrictive requirement and the design and application requirements, in operation,

instances, if the plan or issuer took the additional steps required under the material differences requirement at 26 CFR 54.9812–1(c)(4)(iv)(B), 29 CFR 2590.712(c)(4)(iv)(B), or 45 CFR 146.136(c)(4)(iv)(B) (and the special rule for NQTLs related to network composition at 26 CFR 54.9812–1(c)(4)(iv)(C), 29 CFR 2590.712(c)(4)(iv)(C), or 45 CFR 146.136(c)(4)(iv)(C) did not apply), then the plan or issuer would meet all three independent requirements.[114] The Departments solicit comments on this proposed approach.

If a plan or issuer fails to meet any of the three requirements with respect to an NQTL in a classification, these proposed rules state that the NQTL would violate MHPAEA and may not be imposed on mental health or substance use disorder benefits in the classification. Where a plan or issuer fails to satisfy the requirements of one part of these proposed rules for NQTLs, the plan or issuer must make changes to the terms of the plan or coverage or the way the NQTL is designed or applied to ensure compliance with MHPAEA.

These proposed rules also would prohibit plans and issuers from relying upon any factor or evidentiary standard if the information, evidence, sources, or standards on which the factor or evidentiary standard is based discriminates against mental health or substance use disorder benefits as compared to medical/surgical benefits.[115] Additionally, the proposed rules would require plans and issuers to collect and evaluate relevant outcomes data and address any material differences in access between mental health and substance use disorder benefits and medical/surgical benefits as necessary to ensure compliance. This proposed provision also would impose a special rule for NQTLs related to network composition.[116]

Finally, these proposed rules would make clear that a plan or issuer that has received a final determination of noncompliance under the comparative analysis review process established by the CAA, 2021, including a final determination of noncompliance based on failure to provide a sufficient comparative analysis, also could be in violation of the substantive requirements that apply to NQTLs under MHPAEA, as determined by the Departments. Upon such a determination, the Departments would direct the plan or issuer to not impose the NQTL that is the subject of the comparative analysis, unless and until the plan or issuer can demonstrate compliance or take appropriate action to remedy the violation.[117] The Departments request comments on all aspects of these proposed amendments and additions to the rules regarding NQTLs.

a. Requirement That NQTLs be No More Restrictive for Mental Health and Substance Use Disorder Benefits—26 CFR 54.9812–1(c)(4)(i), 29 CFR 2590.712(c)(4)(i), and 45 CFR 146.136(c)(4)(i)

These proposed rules, if finalized, would redesignate, from what is currently 26 CFR 54.9812–1(c)(4)(i), 29 CFR 2590.712(c)(4)(i), and 45 CFR 146.136(c)(4)(i) to 26 CFR 54.9812–1(c)(4)(ii)(A), 29 CFR 2590.712 (c)(4)(ii)(A), and 45 CFR 146.136(c)(4)(ii)(A), the general rule for evaluating NQTLs, and add new language to these paragraphs to impose additional requirements for NQTLs. As noted elsewhere in the preamble, these proposed rules would provide that a plan or issuer may not apply any NQTL to mental health or substance use disorder benefits in any classification that is more restrictive, as written or in operation, than the predominant NQTL that applies to substantially all medical/surgical benefits in the same classification.[118] While the 2013 final regulations largely relied on an analysis of the processes, strategies, evidentiary standards, and other factors used in the application of NQTLs, proposed 26 CFR 54.9812–1(c)(4)(i), 29 CFR 2590.712(c)(4)(i), and 45 CFR 146.136(c)(4)(i) is consistent with the fundamental purpose of MHPAEA and more closely mirrors the statutory language in Code section 9812(a)(3)(A), ERISA section 712(a)(3)(A), and PHS Act 2726(a)(3)(A), which states that plans and issuers ''. . . shall ensure that . . . the treatment limitations applicable to . . . mental health or substance use disorder benefits are no more restrictive than the predominant treatment limitations applied to substantially all medical and surgical benefits covered by the plan ([or coverage]) . . . .''

To that end, the proposed rules provide an explanation of how the terms ''restrictive,'' ''substantially all,'' and ''predominant'' would apply in the context of the no more restrictive requirement in proposed 26 CFR 54.9812–1(c)(4)(i), 29 CFR 2590.712(c)(4)(i), and 45 CFR 146.136(c)(4)(i). To comply with these proposed rules, if finalized, plans and issuers would be required to follow similar steps to those that apply when analyzing parity with respect to financial requirements or quantitative treatment limitations under the 2013 final regulations. These steps would involve determining the portion of plan payments for medical/surgical benefits subject to an NQTL in a classification; whether the NQTL applies to substantially all medical/surgical benefits in the classification; the predominant variation of the NQTL that applies to medical/surgical benefits in the classification; and whether the NQTL, as applied to mental health and substance use disorder benefits in the classification, is more restrictive than the predominant variation of the NQTL as applied to substantially all medical/surgical benefits.

First, in determining whether an NQTL applies to substantially all medical/surgical benefits in a classification, plans and issuers would be required to determine the portion of plan payments for medical/surgical benefits expected to be subject to the NQTL based on the dollar amount of all plan payments for medical/surgical benefits in the classification expected to be paid under the plan or coverage for the plan year (or the portion of the plan year after a change in benefits that affects the applicability of the NQTL). Similar to the longstanding rules for financial requirements and quantitative treatment limitations, these proposed rules would provide that for NQTLs, any reasonable method may be used to determine the dollar amount expected to be paid under the plan or coverage for medical/surgical benefits. In the Departments' view, for a method to be reasonable with respect to large group market and self-insured group health plans, a plan or issuer would be

if the relevant data show material differences in access to in-network mental health and substance use disorder benefits as compared to in-network medical/surgical benefits in a classification.

[114] The plan or issuer would also be required to document any steps taken in accordance with the material differences requirement (and the special rule for NQTLs related to network composition, if applicable) as part of its comparative analyses. Even if the plan or issuer had assessed compliance prior to the steps taken in accordance with the material differences requirement and the special rule for NQTLs related to network composition, the plan or issuer would be required to re-evaluate whether the no more restrictive requirement and the design and application requirements are met with respect to the adjusted NQTL.

[115] Proposed 26 CFR 54.9812–1(c)(4)(ii)(B), 29 CFR 2590.712(c)(4)(ii)(B), and 45 CFR 146.136(c)(4)(ii)(B).

[116] Proposed 26 CFR 54.9812–1(c)(4)(iv)(C), 29 CFR 2590.712(c)(4)(iv)(C), and 45 CFR 146.136(c)(4)(iv)(C).

[117] Proposed 26 CFR 54.9812–1(c)(4)(vii), 29 CFR 2590.712(c)(4)(vii), and 45 CFR 146.136(c)(4)(vii).

[118] As explained later in this preamble, the Departments are also proposing to add clarifying language to these proposed rules to make clear that any references to the term ''classifications'' in MHPAEA's implementing regulations also includes permissible sub-classifications, including with respect to NQTLs.

required to consider group health plan-level claims data to perform the substantially all and predominant analyses, and must rely on such data if it is credible to perform the required projections.[119] Similarly, for small group market plans, an issuer would be required to consider ''plan''-level (as opposed to the ''product''-level) claims data to perform the substantially all analysis, using the definitions of ''plan'' and ''product'' in 45 CFR 144.103, and would be required to rely on such data if it is credible to perform the required projections.[120] However, if an actuary who is subject to and meets the qualification standards for the issuance of a statement of actuarial opinion regarding health plans in the United States,[121] including having the necessary education and experience to provide the actuarial opinion, determines that a group health plan or issuer does not have sufficient data at the plan level for a reasonable projection of future claims costs for the ''substantially all'' analyses, the group health plan or issuer should utilize other reasonable claims data to make a projection to conduct actuarially-appropriate analyses. As part of using a ''reasonable method'' to make these projections, plans and issuers should document the assumptions used in choosing a data set and making projections. Plans and issuers would not be required to perform the parity analysis under proposed 26 CFR 54.9812–1(c)(4)(i), 29 CFR 2590.712 (c)(4)(i), and 45 CFR 146.136(c)(4)(i) each plan year unless there is a change in plan benefit design or utilization that would affect an NQTL within a classification. The Departments solicit comments on whether there are any challenges or other considerations with this approach regarding which level of data plans and issuers should look to in performing this prong of the analysis, and whether there should be a different standard given the different nature of NQTLs.

Second, plans and issuers would be required to determine whether the NQTL applies to substantially all medical/surgical benefits in the classification, based on the plan payments for medical/surgical benefits subject to an NQTL as a portion of the dollar amount of all plan payments for medical/surgical benefits in the classification expected to be paid under the plan for the plan year. An NQTL would be considered to apply to substantially all medical/surgical benefits in a classification if it applies to at least two-thirds of all medical/surgical benefits in that classification. Whether the NQTL applies to at least two-thirds of all medical/surgical benefits would be determined without regard to whether the NQTL was triggered based on a particular factor or evidentiary standard. For example, if a plan or issuer applies a general exclusion for all benefits in a classification that are for experimental or investigative treatment, and defines experimental or investigative treatment to be treatments with less than a certain number of peer-reviewed studies demonstrating efficacy, the exclusion would be treated as applying to all of the benefits in the classification—not just those that may be subject to the general exclusion for experimental or investigative treatment because they lack the requisite number of peer-reviewed studies (that is, those that actually triggered the NQTL based on the evidentiary standard). These proposed rules further provide that if an NQTL does not apply to at least two-thirds of all medical/surgical benefits in a classification, then that NQTL would not be permitted to be applied to mental health or substance use disorder benefits in that classification.

The Departments request comment on whether any additional clarification is needed for plans and issuers to determine whether an NQTL applies to substantially all medical/surgical benefits in a classification. The Departments acknowledge that there are significant differences between financial requirements or quantitative treatment limitations and NQTLs and therefore also request comments on whether plans and issuers maintain systems capable of making such determinations and the potential administrative burdens that would be associated with such determinations. Specifically, the Departments are interested in feedback on the approach under these proposed rules for determining substantially all medical/surgical benefits in a classification with respect to certain NQTLs, including those that are used to exclude benefits under the plan or coverage (such as exclusions for experimental or investigational treatment). The Departments also solicit comments on the interaction of this approach with other statutory requirements for plans and issuers prohibiting certain NQTLs on medical/surgical benefits (such as the prohibition on prior authorization for any minimum hospital length of stay after childbirth under the Newborns' and Mothers' Health Protection Act[122]).

If an NQTL applies to substantially all medical/surgical benefits in a classification, the third step would require plans and issuers to determine the predominant variation of the NQTL that is applied to substantially all medical/surgical benefits subject to the NQTL in the classification. The Departments propose that the term ''predominant'' would, for this purpose, mean the most common or most frequent variation of an NQTL within a benefit classification. For example, if a plan applies inpatient concurrent review commencing 1 day, 3 days, or 7 days after admission, depending on the reason for a stay in a hospital or other inpatient facility, or the procedure performed during such a stay, the plan imposes three different variations of the NQTL within the benefit classification. Under this example, to determine which variation is predominant, the plan would determine the portion of inpatient benefits subject to each of the three different variations of the NQTL based on the dollar amount of all plan payments expected to be paid under the plan or coverage for the plan year (or the portion of the plan year after a change in benefits that affects the applicability of the NQTL). Similarly, if a plan applies an NQTL such as prior authorization in a manner that differs based on the manner of review (auto-adjudication vs. manual review) and the number of levels of review (first-level review vs. first-level review and peer-to-peer review), the plan would regard each unique combination as a separate variation. If the plan or issuer imposes only one variation of an NQTL, that variation is considered the predominant NQTL for purposes of the no more restrictive requirement.

Variations of an NQTL for purposes of the determination of which is

[119] *See* FAQs Part 34, Q3 (interpreting the reasonable method requirement with respect to financial requirements and quantitative treatment limits).

[120] 45 CFR 144.103 generally defines ''product'' as a discrete package of health insurance coverage benefits offered using a particular product network type within a service area, and ''plan'' as the pairing of the health insurance coverage benefits under the product with a particular cost-sharing structure, provider network, and service area. In this context, the term ''plan'' is not synonymous with the term ''group health plan.'' This approach would also apply to individual health insurance coverage under HHS regulations that incorporate the group market rules by reference.

[121] The U.S. Qualification Standards apply to members of the six U.S.-based organizations who issue Statements of Actuarial Opinion in the United States. The organizations are the American Academy of Actuaries, American Society of Pension Professionals and Actuaries, American Society of Enrolled Actuaries, Casualty Actuarial Society, Conference of Consulting Actuaries, and Society of Actuaries.

[122] Code section 9811, ERISA section 711, and PHS Act sections 2725 and 2751; 26 CFR 54.9811–1, 29 CFR 2590.711, and 45 CFR 146.130 and 148.170.

''predominant'' are different than levels of a type of financial requirement or quantitative treatment limitation. Because of the nature of NQTLs, the same mathematical principles for combining plan payments to get to more than one-half for a financial requirement or quantitative treatment limitation may not always be transferrable when determining which variation of an NQTL is predominant. Therefore, for purposes of NQTLs, the ''predominant'' variation would be the most common or frequent variation of the NQTL. The most common or frequent variation would be the variation that applies to the highest portion of all medical/surgical benefits within a classification that are subject to the NQTL based on expected plan payments. This proposed definition mirrors the statutory definition of the term ''predominant'' in Code section 9812(a)(3)(B)(ii), ERISA section 712(a)(3)(B)(ii), and PHS Act section 2726(a)(3)(B)(ii). However, it is different in some ways from the 2013 final regulations for financial requirements and quantitative treatment limitations, because the distinct nature of NQTLs necessitates looking to the most common or frequent *variation* rather than comparing and combining numerical *levels.* Using the inpatient concurrent review example described earlier in this section of the preamble, if the plan had determined that applying concurrent review 7 days after admission was the predominant variation, the plan would be prohibited from applying a more restrictive variation of that NQTL to mental health or substance use disorder benefits in the classification.

The Departments request comment on this approach and any additional clarifications or specificity that is necessary for plans and issuers to determine the predominant NQTL that applies to substantially all medical/surgical benefits in a classification, including what characteristics of a particular NQTL should be considered when determining the predominant variation when a plan or issuer imposes multiple variations, and how to distinguish between what might be a single NQTL without any variations versus what might be variations of a single NQTL. The Departments also request comment on what should be considered the predominant variation of an NQTL when multiple variations are equally common or frequent. Additionally, the Departments are interested in alternative approaches to determining the predominant variation of an NQTL that would provide clarity across a wide variety of NQTLs and ways that plans and issuers design and apply NQTLs to various types of benefits.

Fourth, under these proposed rules, an NQTL applied to mental health or substance use disorder benefits cannot be more restrictive than the predominant NQTL applied to substantially all medical/surgical benefits in the same classification. An NQTL is restrictive if it imposes conditions, terms, or requirements that limit access to benefits under the terms of the plan or coverage. For purposes of determining whether an NQTL is restrictive, ''conditions, terms, or requirements'' would include, but would not be limited to, those that compel an action by or on behalf of a participant or beneficiary (including by their authorized representative or a provider or facility) to access benefits and those that limit access to the full range of treatment options available for a condition or disorder under the plan or coverage. Thus, if an NQTL applied to mental health or substance use disorder benefits is determined to be more restrictive, as written or in operation, than the predominant NQTL applied to substantially all medical/surgical benefits in the same classification, the NQTL would violate MHPAEA, subject to certain exceptions for independent professional medical or clinical standards and standards related to fraud, waste, and abuse, discussed in more detail later in this preamble.

The Departments recognize that the term ''restrictive'' is not specifically defined in MHPAEA or the 2013 final regulations in the context of the parity analysis for financial requirements and quantitative treatment limitations. The Departments are of the view that it is generally apparent when one financial requirement or quantitative treatment limitation is more restrictive than another. For example, a $25 copayment is clearly more restrictive than a $15 copayment, and a 5-visit limit is more restrictive than a 10-visit limit. However, due to the nature of NQTLs, which generally do not allow for such straightforward comparison, and the fact that many plans and issuers have designed and applied NQTLs to mental health and substance use disorder benefits in a manner that limits access to those benefits as compared to medical/surgical benefits, the Departments are proposing a definition of ''restrictive'' to clarify how this term should be interpreted specifically for NQTLs in a manner that is consistent with MHPAEA's fundamental purpose. The Departments solicit comments on any additional clarifications necessary for plans and issuers to apply the no more restrictive requirement with respect to NQTLs applicable to mental health and substance use disorder benefits. The Departments also solicit comments on whether there are any specific NQTLs for which it would be challenging for plans and issuers to determine whether the NQTL is more restrictive with respect to mental health and substance use disorder benefits than medical/surgical benefits, consistent with the proposed definition of ''restrictive.''

The following example applies each of the steps in the analysis described earlier in this preamble for the proposed no more restrictive requirement at 26 CFR 54.9812–1(c)(4)(i), 29 CFR 2590.712(c)(4)(i), and 45 CFR 146.136(c)(4)(i). Under this example, a self-insured group health plan imposes a medical management requirement that all inpatient, in-network medical/surgical and mental health and substance use disorder facilities have 24-hour onsite nursing services available. First, the plan would determine the portion of plan payments for medical/surgical benefits that are subject to the NQTL, based on the dollar amount of all plan payments for medical/surgical benefits in the inpatient, in-network classification expected to be paid under the plan for the plan year. Second, based on this calculation, the plan would determine whether the NQTL applies to at least two-thirds of inpatient, in-network medical/surgical benefits. Because all medical/surgical benefits in the classification are subject to the medical management requirement, the NQTL would apply to substantially all medical/surgical benefits in the classification. Third, the plan would identify the predominant, or most common or frequent, variation of the NQTL based on the portion of plan payments for medical/surgical benefits that are subject to each variation of the NQTL. In this case, because there is only one variation (the requirement that facilities have 24-hour on-site nursing services available), that variation of the NQTL would be predominant under the framework in these proposed rules. Finally, the plan would evaluate whether the NQTL as applied to mental health and substance use disorder benefits is more restrictive, as written or in operation, than the predominant NQTL applicable to substantially all medical/surgical benefits in the inpatient, in-network classification. Because the requirement that facilities have 24-hour on-site nursing services available does not impose additional conditions, terms, or requirements that

limit access to benefits under the terms of the plan or coverage for mental health or substance use disorder benefits as compared to medical/surgical benefits by, for example, compelling an additional action by a participant or beneficiary to access mental health and substance use disorder benefits or limiting access to the full range of treatment options available, for mental health or substance use disorder benefits as compared to medical/surgical benefits in the classification, this NQTL would satisfy the no more restrictive requirement under 26 CFR 54.9812–1(c)(4)(i), 29 CFR 2590.712(c)(4)(i), and 45 CFR 146.136(c)(4)(i) of these proposed rules.

If a plan or issuer analyzes an NQTL and determines that it satisfies the no more restrictive requirement under these proposed rules, it would also still be required under these proposed rules to analyze the NQTL under the design and application requirements and the relevant data evaluation requirements, discussed later in this preamble, to ensure compliance with MHPAEA. As discussed earlier in this preamble, the Departments note that, while the no more restrictive requirement appears first in these proposed rules, nothing in these proposed rules is intended to require that compliance with the no more restrictive requirement be assessed before the other requirements for NQTLs in proposed 26 CFR 54.9812–1(c)(4), 29 CFR 2590.712(c)(4), and 45 CFR 146.136(c)(4). The Departments propose adding several examples, described later in this preamble, to illustrate how the no more restrictive requirement, the design and application requirements, and the relevant data evaluation requirements in these proposed rules apply to various factual scenarios.

Under these proposed rules, the Departments do not intend to interfere with a plan's or issuer's attempts to ensure that coverage for benefits for the treatment of mental health conditions and substance use disorders is consistent with generally accepted independent professional medical or clinical standards. Similarly, the Departments do not intend for the no more restrictive requirement to prevent plans and issuers from applying reasonably designed and carefully circumscribed measures adopted for the purpose of detecting or preventing and proving fraud, waste, and abuse. The Departments recognize that the application of independent professional medical or clinical standards and standards related to fraud, waste, and abuse generally improve and help to ensure appropriate care for participants and beneficiaries, rather than restrict access to needed benefits. The Departments also acknowledge that there are instances in which the application of independent professional medical or clinical standards might result in plans and issuers applying NQTLs to mental health or substance use disorder benefits that would otherwise be more restrictive than the predominant NQTL applied to substantially all medical/surgical benefits in the same classification when applying the no more restrictive requirement in proposed 26 CFR 54.9812–1(c)(4)(i)(A) through (D), 29 CFR 2590.712(c)(4)(i)(A) through (D), and 45 CFR 146.136(c)(4)(i)(A) through (D). Therefore, the Departments propose that an NQTL applied to mental health or substance use disorder benefits in any classification would not be considered to violate the no more restrictive requirement if the NQTL impartially applies independent professional medical or clinical standards or applies standards related to fraud, waste, and abuse, that meet specific requirements, discussed in more detail later in this preamble.

b. Requirements Related to Design and Application of the NQTL—26 CFR 54.9812–1(c)(4)(ii), 29 CFR 2590.712(c)(4)(ii), and 45 CFR 146.136(c)(4)(ii)

As mentioned earlier in this preamble, these proposed rules would redesignate the requirement currently in 26 CFR 54.9812–1(c)(4)(i), 29 CFR 2590.712(c)(4)(i), and 45 CFR 146.136(c)(4)(i) as paragraph (c)(4)(ii)(A) and would amend the requirement codified in the 2013 final regulations to align with the Departments' consistent interpretation that a plan or issuer may not impose an NQTL with respect to mental health or substance use disorder benefits in any classification unless, under the terms of the plan (or health insurance coverage) as written and in operation, any processes, strategies, evidentiary standards, or other factors used in *designing and applying* the NQTL to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in *designing and applying* the limitation with respect to medical/surgical benefits in the classification. To codify this interpretation, and for consistency with statutory language added by the CAA, 2021, the Departments propose to revise the regulatory text to make this requirement explicit.

Under these proposed rules, a key consideration in determining whether, in designing or applying an NQTL to mental health or substance use disorder benefits, the processes, strategies, evidentiary standards, or other factors are applied no more stringently than those used in designing and applying the limitation to medical/surgical benefits in the classification, would be whether any process, strategy, evidentiary standard, or other factor restricts access more so to mental health or substance use disorder benefits than to generally comparable medical/surgical benefits. This approach is consistent with the proposed new purpose section set forth in these proposed rules and discussed earlier in this preamble.

Under these proposed rules, if a plan or issuer imposes an NQTL that impartially applies independent professional medical or clinical standards to medical/surgical benefits and mental health or substance use disorder benefits that would not be considered a violation of the no more restrictive requirement or the relevant data evaluation requirements. However, the plan or issuer would still need to comply with the design and application requirements in proposed 26 CFR 54.49812–1(c)(4)(ii)(A), 29 CFR 2590.712(c)(4)(ii)(A), and 45 CFR 146.136(c)(4)(ii)(A). That is, the plan or issuer would not be permitted to impose an NQTL with respect to mental health or substance use disorder benefits in any classification unless, under the terms of the plan (or health insurance coverage) as written and in operation, any processes, strategies, evidentiary standards, or other factors used in designing and applying the NQTL to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than those used in designing and applying the NQTL with respect to medical/surgical benefits in the classification. Similarly, if a plan or issuer imposes standards related to fraud, waste, and abuse in a manner described in the proposed rules, the plan or issuer would still be required to comply with the design and application requirements and the relevant data evaluation requirements in proposed 26 CFR 54.49812–1(c)(4)(ii) and (iv), 29 CFR 2590.712(c)(4)(ii) and (iv), and 45 CFR 146.136(c)(4)(ii) and (iv).

The Departments also propose to add a new provision to further ensure that processes, strategies, evidentiary standards, and other factors used in designing and applying an NQTL to mental health or substance use disorder benefits in a classification are comparable to, and are applied no more stringently than, those used in designing

and applying an NQTL to medical/surgical benefits in the same classification. Specifically, for purposes of determining comparability and stringency under the design and application requirements of 26 CFR 54.49812–1(c)(4)(ii)(A), 29 CFR 2590.712(c)(4)(ii)(A), and 45 CFR 146.136(c)(4)(ii)(A), these proposed rules would prohibit plans and issuers from relying upon any factor or evidentiary standard if the information, evidence, sources, or standards on which the factor or evidentiary standard is based discriminates against mental health or substance use disorder benefits as compared to medical/surgical benefits. Various factors and evidentiary standards that plans and issuers have previously relied on, or currently rely on, to design or apply NQTLs to mental health or substance use disorder benefits might themselves discriminate against mental health and substance use disorder benefits by treating them in a different and less favorable manner. Consistent with MHPAEA's fundamental purpose, the Departments are of the view that plans and issuers should not be permitted to rely on such factors or evidentiary standards to design and apply an NQTL if the information, evidence, sources, or standards on which the factor or evidentiary standard is based discriminates against mental health and substance use disorder benefits as compared to medical/surgical benefits. These proposed rules establish this requirement as a threshold component of the analysis that a plan or issuer would be required to undertake when analyzing an NQTL's compliance with the design and application requirements under these proposed rules.[123]

For purposes of these proposed rules, independent professional medical or clinical standards described in proposed 26 CFR 54.49812–1(c)(4)(v)(A), 29 CFR 2590.712(c)(4)(v)(A), and 45 CFR 146.136(c)(4)(v)(A) would not be considered to discriminate against mental health or substance use disorder benefits, consistent with the exceptions to other requirements for NQTLs in described elsewhere in this preamble. Similarly, standards related to fraud, waste, and abuse under proposed 26 CFR 54.49812–1(c)(4)(v)(B), 29 CFR 2590.712(c)(4)(v)(B), and 45 CFR 146.136(c)(4)(v)(B) would also not be considered to discriminate against mental health or substance use disorder benefits. The Departments request comments on this approach. The Departments also solicit comments on any additional clarifications necessary for plans and issuers to apply this standard with respect to NQTLs applicable to mental health and substance use disorder benefits, as the term ''discriminate'' is proposed to be defined in these proposed rules.

Under these proposed rules, information is considered to discriminate against mental health or substance use disorder benefits if it is biased or not objective, in a manner that results in less favorable treatment of mental health or substance use disorder benefits, based on all the relevant facts and circumstances. Such relevant facts and circumstances include, but are not limited to, the source of the information, the purpose or context of the information, and the content of the information. Therefore, plans and issuers would not be permitted to rely on information that reflects bias, as those factors or evidentiary standards would be discriminatory under these proposed rules. For this purpose, the Departments are of the view that information that results in the less favorable treatment of mental health and substance use disorder benefits without legitimate justification or that is otherwise not objective would be considered to be biased and to discriminate against mental health and substance use disorder benefits. Under these proposed rules, the determination of whether information is objective and unbiased would be based on all the relevant facts and circumstances including, but not limited to, the source of the information, the purpose or context of the information, and the content of the information. When determining which information, evidence, sources, or standards should inform the factors or evidentiary standards used to design or apply an NQTL, plans and issuers would not be permitted under these proposed rules to use information, evidence, sources, or standards if they are biased in favor of imposing greater restrictions on access to covered mental health and substance use disorder benefits or not objective, based on all the relevant facts and circumstances.

More specifically, the proposed rules would prohibit plans and issuers from relying on historical plan data or other historical information from a time when the plan or coverage was not subject to MHPAEA or was in violation of MHPAEA's requirements where the use of such data results in less favorable treatment of mental health and substance use disorder benefits. As an example, under these proposed rules, a plan or issuer would not be permitted to calculate reimbursement rates based on historical data on total plan spending for each specialty that is divided between mental health and substance use disorder providers and medical/surgical providers, when the total spending by the plan was based on a time period when the plan or coverage was not subject to MHPAEA or was in violation of MHPAEA, if the data results in less favorable treatment of mental health and substance use disorder benefits. Consequently, plans and issuers could not use such data to develop a factor or evidentiary standard for the design or application of an NQTL to mental health or substance use disorder benefits.

Under these proposed rules, to the extent a plan or issuer relies on any factor or evidentiary standard that discriminates against mental health or substance use disorder benefits, or any information, evidence, sources, or standards that inform such factors or evidentiary standards to design and apply NQTLs, the plan or issuer violates the requirement set forth in proposed 26 CFR 54.9812–1(c)(4)(ii)(B), 29 CFR 2590.712(c)(4)(ii)(B), and 45 CFR 146.136(c)(4)(ii)(B). The Departments request comments on all aspects of these provisions of the proposed rules, including whether additional definitions are necessary to comply with these requirements.

c. Illustrative, Non-Exhaustive List of NQTLs—26 CFR 54.9812–1(c)(4)(iii), 29 CFR 2590.712(c)(4)(iii), and 45 CFR 146.136(c)(4)(iii)

These proposed rules, if finalized, would move the illustrative, non-exhaustive list of NQTLs from 26 CFR 54.9812–1(c)(4)(ii), 29 CFR 2590.712(c)(4)(ii), and 45 CFR 146.136(c)(4)(ii) to 26 CFR 54.9812–1(c)(4)(iii), 29 CFR 2590.712(c)(4)(iii), and 45 CFR 146.136(c)(4)(iii) and make several minor changes to this provision. First, these proposed rules would amend this provision to make clear that this illustrative list of NQTLs is non-exhaustive and that there are additional NQTLs not listed in this paragraph.[124]

[123] The Departments note that the prohibition on discriminatory factors and evidentiary standards in proposed 26 CFR 54.49812–1(c)(4)(ii)(B), 29 CFR 2590.712(c)(4)(ii)(B), and 45 CFR 146.136(c)(4)(ii)(B) is not intended to affect the application of any other Federal or State laws for other purposes, and solicit comments on any potential interactions with other such laws that may warrant additional clarification.

[124] The Departments are also proposing to add the term ''non-exhaustive'' to cross-references to the illustrative, non-exhaustive list of NQTLs, contained in the definition of ''treatment limitations'' in 26 CFR 54.9812–1(a), 29 CFR 2590.712(a), and 45 CFR 146.136(a) and in the clarification of the term ''type of financial requirement or treatment limitation'' in 26 CFR

Continued

As stated in the definition of the term ''treatment limitations'' in the 2013 final regulations and these proposed rules, an NQTL is any provision that limits the scope or duration of benefits for treatment under a plan or coverage that is not a quantitative treatment limitation. Some interested parties have requested that the Departments issue an exhaustive list of NQTLs to provide clarity as to the exact provisions for which plans and issuers are expected to perform and document comparative analyses pursuant to the CAA, 2021. Others have asked the Departments not to provide such a list, asserting that doing so could encourage plans and issuers to create new NQTLs outside the list or rename NQTLs in an attempt to circumvent MHPAEA's requirements.

Because of the broad scope of the meaning of the term ''nonquantitative treatment limitation,'' [125] and the fact that plan or coverage terms that otherwise limit the scope or duration of benefits for treatment in similar ways may use different terminology, the Departments are not proposing to issue an exhaustive list of NQTLs. However, the Departments are proposing to add examples of additional NQTLs to these proposed rules, as discussed later in this preamble. Previous Reports to Congress [126] also include lists of the NQTLs that have been the subject of comparative analyses reviewed by the Departments. Additionally, the 2020 MHPAEA Self-Compliance Tool provides an illustrative, non-exhaustive list of NQTLs.[127] As the Departments encounter additional NQTLs, the Departments expect to highlight them in future resources. The list of NQTLs, therefore, is more accurately framed as a non-exhaustive list of examples that can be updated, as appropriate, as part of the resources the Departments make available to assist the regulated community and interested parties in their efforts to understand and comply with MHPAEA.

These proposed rules would also amend the illustrative, non-exhaustive list of NQTLs to replace ''[s]tandards for provider admission to participate in a network, including reimbursement rates'' with ''standards related to network composition, including but not limited to, standards for provider and facility admission to participate in a network or for continued network participation, including methods for determining reimbursement rates, credentialing standards, and procedures for ensuring the network includes an adequate number of each category of provider and facility to provide covered services under the plan or coverage.'' The standards that govern how the network is constructed and defined are critical limitations on the availability of benefits under the plan or coverage. Accordingly, the Departments reaffirm that standards related to network composition are subject to the requirements applicable to NQTLs, including their design and application as set forth in these proposed rules. Standards related to network composition operate to limit the scope or duration of benefits for treatment—a fundamental characteristic of an NQTL. The design, administration, and composition of networks that comply with MHPAEA's requirements are essential to participants and beneficiaries having access to treatment for mental health conditions and substance use disorders in parity with medical/surgical benefits.

Additionally, the Departments recognize that some plans and issuers use other related NQTLs, such as credentialing standards, to help ensure an adequate number of available providers as part of their standards related to network composition. Therefore, the Departments propose to specifically include credentialing standards and procedures for ensuring the network includes an adequate number of each category of mental health and substance use disorder providers and facilities relative to the number of medical/surgical providers and facilities in the illustrative, non-exhaustive list of NQTLs to make clear that plans and issuers setting standards to participate in a network through the application of one or more NQTLs would be required to satisfy the requirements for NQTLs under these proposed rules.

In the 2013 final regulations, the phrase ''usual, customary, and reasonable charges,'' found in the illustrative list of NQTLs is often used to refer to a plan's method for determining out-of-network rates. However, the Departments are aware that plans and issuers may use other methods to determine out-of-network rates, such as using a percentage of Medicare rates.[128] These proposed rules therefore would amend the description of this illustrative NQTL to encompass a broader range of methods for determining out-of-network rates, such as allowed amounts; usual, customary, and reasonable charges; or application of other external benchmarks for out-of-network rates.

Finally, these proposed rules would add a specific reference to prior authorization requirements as an example of a medical management standard limiting or excluding benefits based on medical necessity or medical appropriateness, consistent with Example 1 in 26 CFR 54.9812–1(c)(4)(iii), 29 CFR 2590.712(c)(4)(iii), and 45 CFR 146.136(c)(4)(iii) of the 2013 final regulations. In addition to proposing amendments to the NQTLs included in the illustrative, non-exhaustive list codified in this provision, the Departments emphasize that even if an NQTL is not included on this list, a plan or issuer is not excused from compliance with the same standards and framework outlined in these proposed rules. That is, the many other NQTLs not included in the list codified in this provision would also be subject to the same standards and framework outlined in these proposed rules. Examples of additional NQTLs not listed include, but are not limited to, concurrent care review; billing restrictions, such as a requirement for a licensed provider to bill through or under the supervision of another type of licensed provider; retrospective review; treatment plan requirements; refusal to cover treatment until completion of a comprehensive assessment by specific providers; outlier management; and limitations based on expectation of improvement, likelihood of progress, or demonstration of progress. The Departments request comments on the proposed amendments to this provision and additional clarifications that may be necessary with respect to specific NQTLs listed.

54.9812–1(c)(1)(ii), 29 CFR 2590.712(c)(1)(ii), and 45 CFR 146.136(c)(1)(ii).

[125] 26 CFR 54.9812–1(a), 29 CFR 2590.712(a), and 45 CFR 146.136(a) state that ''[t]reatment limitations include . . . nonquantitative treatment limitations, which otherwise limit the scope or duration of benefits for treatment under a plan or coverage.''

[126] *See, e.g.,* 2022 MHPAEA Report to Congress, available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2022-realizing-parity-reducing-stigma-and-raising-awareness.pdf* and *https://www.cms.gov/files/document/2022-mhpaea-report-congress.pdf.*

[127] Self-Compliance Tool for the Mental Health Parity and Addiction Equity Act (MHPAEA) (2020), available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/self-compliance-tool.pdf.*

[128] *See* NY Times, Insurers Alter Cost Formula, and Patients Pay More, available at *https://www.nytimes.com/2012/04/24/nyregion/health-insurers-switch-baseline-for-out-of-network-charges.html;* FairHealth, ''Types of Out-of-Network Reimbursement,'' available at *https://www.fairhealthprovider.org/download/your-costs/Types%20of%20Out-of-Network%20Reimbursement.pdf.*

d. Required Use of Outcomes Data and Special Rule for NQTLs Related to Network Composition—26 CFR 54.9812–1(c)(4)(iv), 29 CFR 2590.712(c)(4)(iv), and 45 CFR 146.136(c)(4)(iv)

As the Departments have highlighted in previous guidance, substantially disparate results are often a red flag that a plan or issuer may be imposing an NQTL in a manner that does not comply with MHPAEA.[129] The Departments are of the view that relevant outcomes data should be collected and evaluated as part of analyzing whether an NQTL with respect to mental health or substance use disorder benefits in a classification, is more restrictive, in operation, than the predominant NQTL that is applied to substantially all medical/surgical benefits in the classification. Additionally, the comparative analysis requirement added to MHPAEA by the CAA, 2021 requires a demonstration of whether the processes, strategies, evidentiary standards, and other factors used to apply an NQTL to mental health or substance use disorder benefits, as written and in operation, are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, and other factors used to apply the NQTL to medical/surgical benefits in a classification.[130]

In evaluating how such processes, strategies, evidentiary standards, and other factors are applied in operation, it is necessary to look at how the plan is administered in operation, which in the Departments' view necessarily requires review and consideration of quantitative outcomes data to get a sense of how the NQTL functions in the context of the plan's or issuer's administration and provision of benefits. For example, the Departments have highlighted in prior guidance that plans and issuers should have samples of covered and denied mental health and substance use disorder and medical/surgical benefit claims available to support the comparative analysis.[131] It is critical that a plan or issuer collect information to assess relevant data that show the outcomes that result from the application of an NQTL, evaluate those outcomes (which, as stated earlier in this preamble, may be a red flag that the plan or issuer is imposing an impermissible NQTL that disparately impacts access to covered mental health or substance use disorder benefits), and take reasonable action as necessary to address any material differences in access.

Of particular concern to the Departments are the NQTLs described in 26 CFR 54.9812–1(c)(4)(iii)(D), 29 CFR 2590.712(c)(4)(iii)(D), and 45 CFR 146.136(c)(4)(iii)(D) of these proposed rules. These NQTLs involve standards related to network composition, which include but are not limited to, standards for provider and facility admission to participate in a network or for continued network participation, including methods for determining reimbursement rates, credentialing standards, and procedures for ensuring the network includes an adequate number of each category of provider and facility to provide services under the plan or coverage. These standards are critical to ensuring parity in access to mental health and substance use disorder benefits for participants and beneficiaries. The Departments are also aware that there is a growing disparity between in-network reimbursement rates for mental health and substance use disorder providers and medical/surgical providers, which may more negatively impact access under a plan or coverage to mental health and substance use disorder benefits as compared with medical/surgical benefits.[132] Additionally, there is a significant disparity between how often participants and beneficiaries have little or no choice under their plan or coverage but to utilize out-of-network mental health and substance use disorder providers and facilities, as compared to medical/surgical providers and facilities.[133]

Therefore, the Departments propose to add a requirement to provide that, when designing and applying an NQTL, a plan or issuer must collect and evaluate relevant data in a manner reasonably designed to assess the impact of the NQTL on access to mental health and substance use disorder benefits and medical/surgical benefits, and consider the impact as part of the plan's or issuer's analysis of whether such NQTL, in operation, complies with proposed 26 CFR 54.9812–1(c)(4)(i) and (ii), 29 CFR 2590.712(c)(4)(i) and (ii), and 45 CFR 146.136(c)(4)(i) and (ii). These proposed rules would permit the Departments to specify the type, form, and manner for this data collection and evaluation in future guidance.

Under these proposed rules, the relevant data that a plan or issuer would be required to collect and evaluate for all NQTLs (in each individual comparative analysis) includes, but is not limited to, the number and percentage of relevant claims denials, as well as any other data relevant to the NQTLs as required by State law or private accreditation standards. The Departments seek comments on whether plans and issuers collect such data as part of their normal business operations, as well as whether there are NQTLs for which the number and percentage of relevant claims denials would not be relevant for evaluating the impact of the NQTL. The Departments also seek comments on any additional guidance plans and issuers would need to comply with the requirements of proposed 26 CFR 54.9812–1(c)(4)(iv), 29 CFR 2590.712(c)(4)(iv), and 45 CFR 146.136(c)(4)(iv) for newly imposed NQTLs or for NQTLs imposed by new plans or issuers, for which relevant data may not be immediately available.

Moreover, because of the Departments' specific concerns about standards related to network composition and other related NQTLs, these proposed rules would require that, in addition to the relevant data required for all NQTLs, plans and issuers must collect and evaluate additional relevant data for NQTLs related to network composition. Such data would include, but would not be limited to, in-network and out-of-network utilization rates (including data related to provider claim submissions), network adequacy metrics (including time and distance data, and data on providers accepting new patients), and provider reimbursement rates (including as compared to billed charges). While this list of data for NQTLs related to network composition is not reflective of the full list of data that plans and issuers often use to assess their networks, these specific data points provide a cross-section of relevant data points that the Departments have looked at in their MHPAEA compliance reviews and investigations, or that States and other interested parties have found useful.[134]

[129] 2020 MHPAEA Self-Compliance Tool; *see* FAQs Part 39, Q7.

[130] *See* Code section 9812(a)(8)(A)(iv), ERISA section 712(a)(8)(A)(iv), and PHS Act section 2726(a)(8)(A)(iv).

[131] *See* FAQs Part 45, Q4.

[132] Melek, S., Davenport, S., Gray, T.J. (2019). Addiction and mental health vs. physical health: Widening disparities in network use and provider reimbursement (p. 6). Milliman. *https://assets.milliman.com/ektron/Addiction_and_mental_health_vs_physical_health_Widening_disparities_in_network_use_and_provider_reimbursement.pdf.*

[133] *Id.*

[134] *See, e.g.,* 2020 MHPAEA Self-Compliance Tool, Appendix II available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/self-compliance-tool.pdf;* Washington State, Model Data Definitions and Methodology Form (used by Washington State for their Second Market Scan), available at *http://www.mhtari.org/model-data-definitions-method.pdf;* Maryland, Instructions for Completing Data Supplement 1 Report (Utilization Review)

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The Departments solicit comments on these specific data points, including whether provider reimbursement rates should be compared to Medicare reimbursement rates as an alternative to billed charges or another external benchmark.

Pursuant to these proposed rules, to the extent the relevant data evaluated under these proposed rules reveal material differences in access to mental health and substance use disorder benefits as compared to medical/surgical benefits, the differences would be considered a strong indicator that the plan or issuer violates proposed 26 CFR 54.9812–1(c)(4)(i) and (ii), 29 CFR 2590.712(c)(4)(i) and (ii), and 45 CFR 146.136(c)(4)(i) and (ii). While under this provision, material differences alone would not be dispositive (except, as discussed below, for NQTLs related to network composition), and would not automatically result in a finding of noncompliance, a plan or issuer would be required to take reasonable action to address any material differences in access as necessary to ensure compliance, in operation, with 26 CFR 54.9812–1(c)(4)(i) and (ii), 29 CFR 2590.712(c)(4)(i) and (ii), and 45 CFR 146.136(c)(4)(i) and (ii) of these proposed rules. Whether any particular action would be considered reasonable in response to any given material differences in access resulting from an evaluation of outcomes data would be determined based on the relevant facts and circumstances, including the NQTL itself, the relevant data, the extent of the material differences in access to mental health and substance use disorder benefits as compared to medical/surgical benefits, and the impact of the material differences in access on participants and beneficiaries. The Departments also solicit comments on what additional information is necessary to clarify what would constitute reasonable action in response to relevant data that reveals material differences in access.

In addition to taking reasonable action to address material differences in access, the plan or issuer would also be required to document in their comparative analyses any such action that has been or is being taken by the plan or issuer to mitigate those material differences, under proposed 26 CFR 54.9812–2(c)(5)(v), 29 CFR 2590.712–1(c)(5)(v), and 45 CFR 146.137(c)(5)(v), as discussed later in this preamble. This requirement would allow plans and issuers to explain why material differences in access demonstrated by the outcomes data should not result in a violation of the rules for NQTLs. The Departments solicit comments on all aspects of the material difference standard at proposed 26 CFR 54.9812–1(c)(4)(iv)(B), 29 CFR 2590.712(c)(4)(iv)(B), and 45 CFR 146.136(c)(4)(iv)(B), including how to define a material difference in access. The Departments are particularly interested in comments regarding how ''material difference'' could be defined in a manner that translates into tangible quantitative research methods that would ensure that data is analyzed using statistical tools and results in meaningful information for plans and issuers to use in addressing barriers to accessing benefits. Specifically, the Departments seek comment on whether materiality should be defined in terms of the results of statistical testing and request feedback from interested parties on the optimal method for assembling data and statistical analysis.

Network composition is the result of the design and application of a myriad of NQTLs and is informed by various processes, strategies, evidentiary standards, and other factors, many of which interact in complex ways and are often either difficult to evaluate separately, or do not portray an adequate picture of the overall relative impact on access when analyzed separately. For example, plans and issuers may develop or consult several standards to help inform their network composition, such as State licensing standards, quality and performance metrics, patient utilization in particular geographic regions, and overall provider availability. Because plans and issuers generally look to the cumulative effect of such standards, practices, and strategies when designing their networks, it is important that plans and issuers also look to the cumulative effect of such standards, practices, and strategies when evaluating any data and standards related to network composition for compliance with MHPAEA.

The Departments are concerned that some plans or issuers may define their NQTLs related to network composition in a way that silos interrelated processes, strategies, and evidentiary standards that should be evaluated together under a plan's or issuer's standards related to network composition. In the Departments' view, all NQTLs related to network composition, taken together, must be designed and applied in compliance with MHPAEA's parity requirements to ensure that networks do not materially disfavor access to mental health and substance use disorder benefits when compared to medical/surgical benefits. Furthermore, because such NQTLs will inherently impact a participant's or beneficiary's access to mental health and substance use disorder benefits, the Departments are of the view that material differences in access shown by outcomes data related to such NQTLs should be subject to a higher level of scrutiny than for other NQTLs.

Accordingly, these proposed rules include a special rule for NQTLs related to network composition. Under these proposed rules at 26 CFR 54.9812–1(c)(4)(iv)(C), 29 CFR 2590.712(c)(4)(iv)(C), and 45 CFR 146.136(c)(4)(iv)(C), when designing and applying one or more NQTLs related to network composition standards, a plan or issuer fails to meet the requirements of proposed 26 CFR 54.9812–1(c)(4)(i) and (ii), 29 CFR 2590.712(c)(4)(i) and (ii), and 45 CFR 146.136(c)(4)(i) and (ii), in operation, if the relevant data show material differences in access to in-network mental health or substance use disorder benefits as compared to in-network medical/surgical benefits in a classification. The Departments also solicit comments on the likely impacts, costs, and benefits of treating network composition as an NQTL for purposes of the regulation, as opposed to treating it merely as an outcome of other NQTLs. To what extent would such an approach better promote equal access to networks? What are potential unintended consequences or implementation issues? In soliciting these comments, the Departments recognize that there is no one established and universal set of metrics for determining the parity of networks, and that parity across mental health and substance use disorder and medical/surgical networks does not necessarily mean equal number of providers in a classification. As such, the Departments recognize that different plans and issuers may take different approaches to ensuring that their mental health and substance use disorder networks are as robust as their medical/surgical networks. The Departments also recognize that there may be significant challenges for some plans and issuers to ensure that their mental health and substance use disorder networks are not more restrictive in operation than their medical/surgical networks. Accordingly, in addition to the comments solicited in the accompanying Technical Release 2023–01P discussed later in this preamble, the Departments solicit comments in this document on ways to compare or assess the parity of mental health and substance use disorder and

Form, available at *https://insurance.maryland.gov/Consumer/Pages/workgroups.aspx.*

medical/surgical networks, while accommodating the different approaches and different challenges that plans and issuers face in building strong mental health and substance use disorder and medical/surgical networks.

The Departments are aware that some plans and issuers rely on minimum time and distance standards set by a private accreditation organization or by other Federal or State programs as the basis for a factor or evidentiary standard for an NQTL related to network composition. Under these proposed rules, plans and issuers would not be permitted to solely rely on this information as an evidentiary standard or to inform a factor used to design and apply an NQTL, unless the plan or issuer complies with the relevant data evaluation requirements and the special rule for NQTLs related to network composition to determine whether the relevant data show material differences in access to in-network mental health or substance use disorder benefits as compared to in-network medical/surgical benefits in a classification. The Departments are of the view that minimum time and distance standards set by a private accreditation organization or by other Federal or State programs may provide a helpful starting point for plans and issuers to develop factors or evidentiary standards but note that these standards are often not designed with purposes of MHPAEA compliance in mind. Therefore, to comply with the relevant data evaluation requirements and the special rule for NQTLs related to network composition under these proposed rules, a plan or issuer may need to go beyond the minimum times and distances outlined in such standards, and also ensure that they do not result in less favorable treatment for mental health and substance use disorder benefits under the plan or coverage, based on all the relevant facts and circumstances. The Departments solicit comments on what additional clarifications are needed on how this proposed provision would apply to the use of private accreditation standards and other Federal or State program standards.

Plans and issuers would be required to take action to address material differences in access or no longer impose the relevant NQTLs. Such actions could include, for example, ensuring that they or their service providers (as applicable) make special efforts to contract with a broad range of mental health and substance use disorder providers who are available, including authorizing greater compensation or other inducements to the extent necessary; expanding telehealth arrangements as appropriate to manage regional shortages; notifying participants and beneficiaries in clear and prominent language on the website, employee brochures, and the summary plan description of a toll-free number for help finding in-network providers; ensuring that the plan's or issuer's service providers (as applicable) reach out to the treating professionals and facilities to see if they will enroll in the network; and ensuring the network directories are accurate and reliable.

The Departments recognize that shortages of mental health and substance use disorder providers could pose challenges to issuers, plans, and their service providers.[135] If, despite taking appropriate action, the relevant data continues to reveal material differences in access, such as, because of provider shortages that the plan or issuer cannot effectively address through no fault of its own, the Departments would not cite such a plan or issuer for failure to comply with 26 CFR 54.9812–1(c)(4)(iv), 29 CFR 2590.712(c)(4)(iv), and 45 CFR 146.136(c)(4)(iv) with respect to the plan's or issuer's NQTL(s) related to network composition if the plan or issuer otherwise complied with the other applicable MHPAEA requirements. Plans and issuers should be prepared, however, to document the actions they have taken and to demonstrate why any disparities are attributable to provider shortages in the geographic area, rather than their NQTLs related to network composition. The Departments request comments on this provision, including on whether and how to allow plans and issuers to account for external circumstances that impact material differences in access. The Departments specifically request comment on how to ensure that any permitted allowances would be sufficiently narrow so they do not permit plans and issuers to inappropriately rely on external circumstances, including provider shortages, as a reason they cannot comply with this provision, and similarly welcome comments on the types of external circumstances, actions, and responses that should be treated as properly mitigating materially different access shown by outcomes data.

These proposed rules would also specify that plans and issuers are not required to comply with the relevant data evaluation requirements for NQTLs that impartially apply generally recognized independent professional medical or clinical standards, consistent with the exceptions to other requirements for NQTLs described elsewhere in this preamble. The Departments solicit comments regarding the degree to which such NQTLs would cause material differences in access revealed by the proposed data that plans and issuers would be required to evaluate with respect to other NQTLs, and how these rules should address multi-faceted causation of material differences in access. Proposed 26 CFR 54.49812–1(c)(4)(iv)(D), 29 CFR 2590.712(c)(4)(iv)(D), and 45 CFR 146.136(c)(4)(iv)(D) would not provide a comparable exception for standards related to fraud, waste, and abuse. As a result, for these standards, plans and issuers would be required to comply with the relevant data evaluation requirements under these proposed rules. While standards related to fraud, waste, and abuse are important tools for plans and issuers, the Departments are of the view that those tools are more likely than independent professional medical or clinical standards to result in NQTLs that improperly restrict access to mental health or substance use disorder benefits and the impact of those NQTLs on access to mental health and substance use disorder benefits should be assessed. Therefore, the Departments propose that plans and issuers that apply NQTLs to detect or prevent and prove fraud, waste, and abuse to mental health and substance use disorder benefits in a classification would be required to comply with the relevant data evaluation requirements with respect to those NQTLs. The Departments solicit comments on these proposals related to the relevant data evaluation requirements and the special rule for NQTLs related to network composition, including whether plans and issuers (and their service providers) generally collect this data as part of their normal business operations.

Contemporaneously with these proposed rules, DOL is issuing Technical Release 2023–01P that sets out principles and seeks public comment to inform future guidance with respect to required data submissions for NQTLs related to network composition and a potential enforcement safe harbor.[136] Specifically,

[135] *See* White House Issue Brief, Reducing the Economic Burden of Unmet Mental Health Needs, available at *https://www.whitehouse.gov/cea/written-materials/2022/05/31/reducing-the-economic-burden-of-unmet-mental-health-needs/* (acknowledging that provider shortages exist and 37% of the population live in areas with mental health practitioner shortages).

[136] The Technical Release was developed in collaboration with HHS and Treasury, and all

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the Technical Release solicits feedback on the type, form, and manner for the data that plans and issuers would be required to include, along with other relevant data as appropriate, as part of their comparative analyses for NQTLs related to network composition (which must be submitted to the Departments upon request). The Technical Release also solicits feedback on how to define certain thresholds for required data and a potential enforcement safe harbor to be specified in future guidance that, if satisfied, would demonstrate to the Departments that a plan or coverage provides comparable access to in-network of providers for mental health and substance use disorder benefits as compared to medical/surgical benefits. In turn, if the safe harbor threshold is met, the plan or issuer would not be subject to Federal enforcement under MHPAEA with respect to NQTLs related to network composition for a specified period of time. The Departments encourage interested parties to review the Technical Release and submit their comments consistent with the instructions contained in it (separate from any comments they submit in response to these proposed rules). The Departments also solicit comments on this approach, including whether the Departments should incorporate additional specific data elements, such as those collected by States, into these proposed rules.

e. Independent Professional Medical or Clinical Standards and Standards to Detect or Prevent and Prove Fraud, Waste, and Abuse—26 CFR 54.9812–1(c)(4)(v), 29 CFR 2590.712(c)(4)(v), and 45 CFR 146.136(c)(4)(v)

As explained earlier in this preamble, the Departments do not intend to interfere with a plan's or issuer's attempts to ensure that NQTLs for benefits for treatment of mental health conditions or substance use disorders are consistent with generally accepted independent professional medical or clinical standards of care or are appropriately designed and carefully circumscribed measures used solely for the purpose of detecting or preventing and proving fraud, waste, and abuse. The Departments recognize that the application of generally recognized independent professional medical or clinical standards and appropriately designed and carefully circumscribed fraud, waste, and abuse measures generally improve care and outcomes for participants and beneficiaries, rather than restrict access to benefits.

Therefore, as discussed earlier in this preamble, the Departments propose to provide exceptions to the proposed requirements in 26 CFR 54.9812–1(c)(4)(i), (c)(4)(ii)(B), and (c)(4)(iv), 29 CFR 2590.712(c)(4)(i), (c)(4)(ii)(B), and (c)(4)(iv), and 45 CFR 146.136(c)(4)(i), (c)(4)(ii)(B), and (c)(4)(iv) (the no more restrictive requirements, the prohibition on discriminatory factors and evidentiary standards, and the relevant data evaluation requirements) for NQTLs that impartially apply generally recognized independent professional medical or clinical standards (consistent with generally accepted standards of care) to medical/surgical benefits and mental health or substance use disorder benefits. Under these proposed rules, the exception would not be available to any plan or issuer with respect to an NQTL that fails to impartially apply such standards, or deviates from those standards in any way, such as by imposing additional or different requirements.

The Departments also propose to provide an exception to the proposed no more restrictive requirements in 26 CFR 54.9812–1(c)(4)(i) and (c)(4)(ii)(B), 29 CFR 2590.712(c)(4)(i) and (c)(4)(ii)(B), and 45 CFR 146.136(c)(4)(i) and (c)(4)(ii)(B) for NQTLs reasonably designed to detect or prevent, and prove fraud, waste, and abuse, based on indicia of fraud, waste, and abuse that have been reliably established through objective and unbiased data. Additionally, these proposed rules would require such NQTLs to also be narrowly designed to minimize the negative impact on access to appropriate mental health and substance use disorder benefits. The Departments believe NQTLs reasonably designed to detect or prevent and prove fraud, waste, and abuse can help improve the overall efficiency of the health care delivery system and play an important role in safeguarding the interests of participants and beneficiaries, where narrowly designed to avoid creating more restrictive limitations on access to mental health and substance use disorder benefits. To ensure that NQTLs reasonably designed to detect or prevent and prove fraud, waste, and abuse are also narrowly designed to minimize the negative impact on access to appropriate mental health and substance use disorder benefits, such NQTLs are still subject to the relevant data evaluation requirements. Additionally, these proposed rules do not provide any exception from the design and application requirements under 26 CFR 54.9812–1(c)(4)(ii), 29 CFR 2590.712(c)(4)(ii), and 45 CFR 146.136(c)(4)(ii), although as discussed earlier in this preamble, NQTLs that apply independent professional medical or clinical standards or standards related to fraud, waste, and abuse in a manner that meets the requirements of this section would not be considered to discriminate against mental health or substance use disorder benefits. The only circumstances in which plans and issuers would not be required to satisfy all three of the requirements of proposed 26 CFR 54.9812–1(c)(4)(i), (ii), and (iv); 29 CFR 2590.712(c)(4)(i), (ii), and (iv); and 45 CFR 146.136(c)(4)(i), (ii), and (iv) to meet their obligations to demonstrate compliance with MHPAEA's parity requirements for NQTLs would be if the NQTL is subject to one of these two exceptions. In instances that an NQTL qualifies for one of these exceptions, the plan or issuer would still be required to comply with the requirements for which the exception or exceptions do not apply.

The Departments stress that these exceptions are not intended to create potential loopholes that would undermine the statutory requirement that NQTLs applied to mental health and substance use disorder benefits be no more restrictive than the predominant NQTLs applicable to substantially all medical/surgical benefits. If these rules are finalized as proposed and the Departments become aware of the creation of new standards for the purpose of imposing NQTLs that are more restrictive with respect to mental health and substance use disorder benefits (or the establishment of new organizations that create such standards), they may provide additional guidance consistent with MHPAEA's fundamental purpose, as necessary.

The Departments solicit comments on these proposed exceptions, including ways to better or more specifically frame them (such as, for example, specifying that generally recognized independent professional medical or clinical standards must be independent, peer-reviewed, or unaffiliated with plans and issuers), consistent with the Departments' view that these exceptions should be narrowly tailored. The Departments also solicit comments on how the framework outlined in these proposed rules could be improved to better ensure that individuals with mental health conditions and substance use disorders benefit from MHPAEA's consumer protections, while also allowing plans and issuers to apply generally recognized independent professional medical or clinical standards and to adopt appropriate, narrowly tailored measures to detect or

comments submitted to DOL will be shared with them and posted on the EBSA website.

prevent and prove fraud, waste, and abuse.

f. Effect of Final Determination of Noncompliance—26 CFR 54.9812–1(c)(4)(vii), 29 CFR 2590.712(c)(4)(vii), and 45 CFR 146.136(c)(4)(vii)

The Departments propose to add language to these proposed rules specifying that, if a plan or issuer receives a final determination from the relevant Secretary that it is not in compliance with the requirements of proposed 26 CFR 54.9816–2, 29 CFR 2590.712–1, and 45 CFR 146.137 with respect to an NQTL, the NQTL would violate 26 CFR 54.9812–1(c)(4), 29 CFR 2590.712(c)(4), and 45 CFR 146.136(c)(4) and the relevant Secretary may direct the plan or issuer not to impose the NQTL, unless and until the plan or issuer demonstrates to the relevant Secretary compliance with the requirements of MHPAEA or takes appropriate action to remedy the violation. Whereas the requirement in the introductory paragraph of 26 CFR 54.9812–1(c)(4), 29 CFR 2590.712(c)(4), and 45 CFR 146.136(c)(4) states that a plan or issuer may not impose an NQTL in the first instance unless it meets all of the applicable substantive requirements for NQTLs under these proposed rules, this proposed provision addresses the effect of a final determination of noncompliance with the NQTL comparative analysis documentation requirements under proposed 26 CFR 54.9812–2, 29 CFR 2590.712–1, and 45 CFR 146.137.

The MHPAEA statute requires ''such plan or coverage *shall ensure that*'' the treatment limitations comply with the substantive requirements of the statute.[137] The statute further requires that the plan or issuer perform and document adequate comparative analyses for NQTLs to ensure compliance.[138] Accordingly, under these proposed rules plans and issuers would be required to ensure that they are complying with MHPAEA's requirements at all times an NQTL is imposed with respect to mental health or substance use disorder benefits and, as explained later in this preamble, plans and issuers would be required to ensure that they have performed and documented comparative analyses for their NQTLs imposed on mental health or substance use disorder benefits (regardless of the timing of any request for such documentation) to ensure compliance. When a plan or issuer has not substantiated compliance with MHPAEA for an NQTL applied to mental health and substance use disorder benefits, the application of the NQTL also would violate MHPAEA. At the same time, the Departments acknowledge that whether and how to cease the application of an impermissible NQTL depends on the nature of the NQTL, the impact on access to mental health or substance use disorder benefits, and other facts and circumstances that are specific to a particular case.

Therefore, when a plan or issuer receives a final determination from the Departments with respect to an NQTL based on failure to demonstrate compliance with proposed 26 CFR 54.9816–2, 29 CFR 2590.712–1, and 45 CFR 146.137, including because the plan or issuer has not submitted a sufficient comparative analysis to demonstrate compliance, these proposed rules would treat such a failure not only as a violation of the NQTL comparative analysis documentation requirements but also as a violation of the substantive NQTL rules under proposed 26 CFR 54.9812–1(c)(4), 29 CFR 2590.712(c)(4), and 45 CFR 146.136(c)(4). The Departments recognize that an immediate cessation of the application of an NQTL may not be feasible for all NQTLs; accordingly, a determination by the Departments of whether to require immediate cessation would be based on the evaluation of facts and circumstances involved in the specific violation and nature of the underlying NQTL. Such facts may include, for example, the level of disruption in the provision of benefits under the plan or coverage if the NQTL immediately ceased to apply, the practicality and complexities involved in the cessation of the NQTL, the effect on participants and beneficiaries and the likely time period needed to cease or modify the NQTL. The Departments also note that such determination would take into account feedback from the plan or issuer. These facts and circumstances would also be relevant to the Departments' assessment of the plan's or issuer's overall efforts to come into compliance with MHPAEA. The Departments stress that, as discussed later in this preamble, the review process for the NQTL comparative analyses allows multiple opportunities for plans and issuers to provide additional information to the Departments and correct a deficient or insufficient comparative analysis. The application of proposed 26 CFR 54.9812–1(c)(4)(vii), 29 CFR 2590.712 (c)(4)(vii), and 45 CFR 146.136(c)(4)(vii) would be illustrated by a new proposed Example 7 of 26 CFR 54.9812–1(c)(4)(viii), 29 CFR 2590.712(c)(4)(viii), and 45 CFR 146.136(c)(4)(viii), discussed later in this preamble. The Departments solicit comments on this proposed provision, including whether there are specific challenges or considerations the Departments should be cognizant of, as a general matter, in approaching situations that involve ceasing application of a particular NQTL.

g. NQTL Examples—26 CFR 54.9812–1(c)(4)(viii), 29 CFR 2590.712(c)(4)(viii), and 45 CFR 146.136(c)(4)(viii)

These proposed rules also would amend 26 CFR 54.9812–1(c)(4)(iii), 29 CFR 2590.712(c)(4)(iii), and 45 CFR 146.136(c)(4)(iii), redesignated as part of these proposed rules as 26 CFR 54.9812–1(c)(4)(viii), 29 CFR 2590.712(c)(4)(viii), and 45 CFR 146.136(c)(4)(viii). These proposed rules would revise some existing examples, remove other existing examples, and add several new examples to further demonstrate the rules of 26 CFR 54.9812–1(c)(4), 29 CFR 2590.712(c)(4), and 45 CFR 146.136(c)(4), as proposed to be amended in these rules.

In some cases, the Departments propose to revise existing examples to show how an NQTL would be analyzed under paragraph (c)(4) in accordance with the proposed amendments. In other cases, the Departments are proposing to replace existing examples with new fact patterns that would more clearly demonstrate how these proposed rules for NQTLs would apply to plans and issuers. In each example in 26 CFR 54.9812–1(c)(4)(viii), 29 CFR 2590.712(c)(4)(viii), and 45 CFR 146.136(c)(4)(viii), a group health plan is subject to the requirements of MHPAEA and provides coverage for both medical/surgical benefits and mental health and substance use disorder benefits. Additionally, in examples that conclude that the plan or issuer violates one provision of 26 CFR 54.9812–1(c)(4), 29 CFR 2590.712(c)(4), and 45 CFR 146.136(c)(4), such examples do not necessarily imply compliance with all of the other relevant provisions (as these examples do not analyze compliance with all other provisions). The Departments solicit comments on these new examples and the proposed amendments to existing examples.

Example 1—More restrictive prior authorization requirement in operation. First, the Departments propose to amend existing Example 1 to illustrate the effect of a disparity in the routine approval of benefits for mental health

[137] Code section 9812(a)(3)(A), ERISA section 712(a)(3)(A), and PHS Act section 2726(a)(3)(A).

[138] Code section 9812(a)(8), ERISA section 712(a)(8), and PHS Act section 2726(a)(8).

conditions and substance use disorders compared to benefits for medical/surgical conditions in a classification. This proposed amended example would retain similar facts to the existing example, in which a plan requires prior authorization from the plan's utilization reviewer that a treatment is medically necessary for all inpatient, in-network medical/surgical benefits and for all inpatient, in-network mental health and substance use disorder benefits. While the plan approves inpatient, in-network benefits for medical/surgical conditions for periods of 1, 3, and 7 days, after which a treatment plan must be submitted by the patient's attending provider and approved by the plan, the approvals for 7 days are most common under this plan. However, for mental health and substance use disorder benefits, the plan routinely approves only 1 day of inpatient, in-network benefits before a treatment plan must be submitted by the patient's attending provider and approved by the plan. In this example, the difference in the duration of approvals is not the result of independent professional medical or clinical standards or standards related to fraud, waste, and abuse, but rather reflects the application of a heightened standard to the provision of the mental health and substance use disorder benefits in the relevant classification.

The existing conclusion to Example 1 states that the plan violates the no more restrictive requirement in 26 CFR 54.9812–1(c)(4)(i), 29 CFR 2590.712(c)(4)(i), and 45 CFR 146.136(c)(4)(i) because it is applying a stricter NQTL in operation to mental health and substance use disorder benefits than is applied to medical/surgical benefits. The proposed amended conclusion would provide additional explanation to illustrate how the prior authorization NQTL would be analyzed under these proposed rules (and revise the conclusion to indicate that paragraph (c)(4)(i) of those sections would be redesignated as paragraph (c)(4)(ii)(A), and new requirements would be added at paragraph (c)(4)(i)). The proposed conclusion would explain that the NQTL applies to at least two-thirds of all medical/surgical benefits in the inpatient, in-network classification, because it applies to all inpatient medical/surgical benefits in that classification. The most common or frequent variation of this NQTL, and, therefore, the predominant NQTL that applies to medical/surgical benefits in the classification, is the routine approval of inpatient benefits for 7 days before the patient's attending provider must submit a treatment plan. However, the plan routinely approves inpatient, in-network benefits for mental health and substance use disorder conditions for only 1 day before the patient's attending provider must submit a treatment plan. In doing so, the plan does not impartially apply independent professional medical or clinical standards or apply standards related to fraud, waste, and abuse that qualify for the exceptions in proposed 26 CFR 54.9812–1(c)(4)(i)(E), 29 CFR 2590.712(c)(4)(i)(E), and 45 CFR 146.136(c)(4)(i)(E).

In this proposed amended Example 1, in operation, the prior authorization NQTL imposed on mental health and substance use disorder benefits in the inpatient in-network classification is more restrictive than the predominant prior authorization requirement applicable to substantially all medical/surgical benefits in the classification, because the practice of approving 1 day of inpatient, in-network mental health and substance use disorder benefits limits access to the full range of treatment options available for benefits for a condition or disorder under the plan or coverage as compared to the routine 7-day approval that is given for inpatient, in-network medical/surgical benefits. As the prior authorization requirement violates the no more restrictive requirement, the proposed amended example does not address the other aspects of the NQTL parity analysis under these proposed rules (the design and application requirements or the relevant data evaluation requirements), because the plan would violate MHPAEA, even if it satisfied those requirements.

Example 2—More restrictive peer-to-peer concurrent review requirements in operation. In new Example 2 in these proposed rules, a plan follows a written process for the concurrent review of all medical/surgical benefits and mental health and substance use disorder benefits within the inpatient, in-network classification. Under the process, a first-level review is conducted in every instance in which concurrent review applies, and an authorization request is approved by the first-level reviewer only if the clinical information submitted by the facility meets the plan's criteria for a continued stay. If the first-level reviewer is unable to approve the authorization request because the clinical information submitted by the facility does not meet the criteria for a continued stay, it is sent to a second-level reviewer who will either approve or deny the request. While the written process only requires review by the second-level reviewer to either deny or approve the request, in operation, second-level reviewers for mental health and substance use disorder benefits conduct a peer-to-peer review with a provider (acting as the authorized representative of a participant or beneficiary) before coverage of the treatment is approved. The peer-to-peer review requirement is not the result of independent professional medical or clinical standards or standards related to fraud, waste, and abuse. The plan does not impose a peer-to-peer review, as written or in operation, as part of the second-level review for medical/surgical benefits.

In this proposed example, the concurrent review requirement violates the no more restrictive requirement at proposed 26 CFR 54.9812–1(c)(4)(i), 29 CFR 2590.712(c)(4)(i), and 45 CFR 146.136(c)(4)(i). The concurrent review NQTL applies to at least two-thirds of all medical/surgical benefits within the inpatient, in-network classification because the plan follows the concurrent review process for all medical/surgical benefits. The most common or frequent variation of this NQTL and, therefore, the predominant NQTL that applies to all medical/surgical benefits in the classification, is that peer-to-peer review is not imposed as part of second-level review. The plan does not impartially apply independent professional medical or clinical standards or apply standards related to fraud, waste, and abuse that qualify for the exceptions in 26 CFR 54.9812–1(c)(4)(i)(E), 29 CFR 2590.712(c)(4)(i)(E), and 45 CFR 146.136(c)(4)(i)(E) of these proposed rules. While, as written, the plan's concurrent review requirements are the same for medical/surgical benefits and mental health and substance use disorder benefits, in operation, by compelling an additional action (peer-to-peer review as part of second-level review) to access only mental health or substance use disorder benefits, the plan applies the concurrent review NQTL to mental health or substance use disorder benefits in a manner that is more restrictive than the predominant concurrent review requirements applied to substantially all medical/surgical benefits in the inpatient, in-network classification. Because the plan violates the no more restrictive requirement, the example does not analyze compliance with the design and application requirements or the relevant data evaluation requirements in these proposed rules.

Example 3—More restrictive peer-to-peer review medical necessity standard in operation; deviation from independent professional medical and clinical standards. The Departments

propose to add new Example 3 focusing on the imposition of an additional NQTL (completion of peer-to-peer review) on benefits for substance use disorders that is more restrictive than the predominant NQTL applicable to substantially all medical/surgical benefits in the classification. In this example, the plan generally requires that all treatment be medically necessary in the inpatient, out-of-network classification. For both medical/surgical benefits and mental health and substance use disorder benefits, the written medical necessity standards are based on independent professional medical or clinical standards that do not require peer-to-peer review. In operation, the plan covers out-of-network benefits for medical/surgical or mental health inpatient treatment outside of a hospital if the physician documents medical appropriateness, but for out-of-network substance use disorder inpatient treatment outside of a hospital, the plan requires a physician to also complete peer-to-peer review.

In this example, the plan violates proposed 26 CFR 54.9812–1(c)(4)(i), 29 CFR 2590.712(c)(4)(i), and 45 CFR 146.136(c)(4)(i). The medical necessity NQTL applies to at least two-thirds of all medical/surgical benefits in the out-of-network, inpatient classification. The most common or frequent variation of the NQTL and, therefore, the predominant NQTL that applies to substantially all medical/surgical benefits, is the requirement that a physician document medical appropriateness without peer-to-peer review. The plan purports to satisfy the exception for independent professional medical or clinical standards in proposed 26 CFR 54.9812–1(c)(4)(i)(E), 29 CFR 2590.712(c)(4)(i)(E), and 45 CFR 146.136(c)(4)(i)(E), but deviates from those standards in operation by imposing the additional requirements to complete peer-to-peer review with respect to substance use disorder inpatient treatment outside of a hospital within the classification. As written, the plan provisions apply the NQTL to mental health and substance use disorder benefits in the inpatient, out-of-network classification in the same manner as for medical/surgical benefits. However, in operation, the medical necessity NQTL imposed on out-of-network substance use disorder benefits for treatment outside of a hospital is more restrictive than the predominant NQTL applied to substantially all medical/surgical benefits in the classification because it limits access to the full range of treatment options available for a condition or disorder under the plan or coverage as compared to medical/surgical benefits. The NQTL is not the result of independent professional medical or clinical standards or standards related to fraud, waste, and abuse that qualify for the exceptions to the no more restrictive requirement under these proposed rules. Because the plan violates the no more restrictive requirement, the example does not analyze compliance with the design and application requirements or the relevant data evaluation requirements under these proposed rules.

Example 4—Not comparable and more stringent methods for determining reimbursement rates in operation. New proposed Example 4 would illustrate how plans and issuers must ensure compliance in operation with the design and application requirements under 26 CFR 54.9812–1(c)(4)(ii), 29 CFR 2590.712(c)(4)(ii), and 45 CFR 146.136(c)(4)(ii) for a plan's reimbursement rate methodology NQTL, based in part on guidance in FAQs Part 39.[139] For purposes of this example, the facts assume that the plan's methods for determining reimbursement rates for mental health and substance use disorder benefits satisfy the no more restrictive requirement. In this example, a plan's base reimbursement rates for outpatient, in-network providers are determined based on a variety of factors, including the provider's required training, licensure, and expertise. As written, for mental health, substance use disorder, and medical/surgical benefits, all reimbursement rates for physicians and non-physician practitioners for the same Current Procedural Terminology (CPT) code vary based on a combination of factors, such as the nature of the service, provider type, number of providers qualified to provide the service in a given geographic area, and market need (demand). As a result, reimbursement rates for mental health, substance use disorder, and medical/surgical benefits furnished by non-physician providers are generally less than for physician providers. In operation, the plan reduces the reimbursement rate for mental health and substance use disorder non-physician providers from that paid to mental health and substance use disorder physicians by the same percentage for every CPT code but does not do the same for non-physician medical/surgical providers.

In this proposed new example, the plan violates the design and application requirements under these proposed rules. Because the plan reimburses non-physician providers of mental health and substance use disorder services by reducing their reimbursement rate from the rate for physician providers by the same percentage for every CPT code, but does not apply the same reduction to non-physician providers of medical/surgical services, in operation, the factors used in applying the NQTL to mental health and substance use disorder benefits are not comparable to, and are applied more stringently than, the factors used in applying the limitation with respect to medical/surgical benefits. To continue to apply the current reimbursement rate methodology, the plan would need to ensure that the percentage reduction for mental health and substance use disorder non-physician providers complies with the design and application requirements as compared to the percentage reduction for medical/surgical non-physician providers. Because the plan violates the design and application requirements of these proposed rules, the example does not analyze compliance with the relevant data evaluation requirements (and the facts stipulate compliance with the no more restrictive requirement).

Example 5—Exception for impartially applied generally recognized independent professional medical or clinical standards. In new proposed Example 5, a group health plan develops a medical management requirement for all inpatient, out-of-network benefits for both medical/surgical benefits and mental health and substance use disorder benefits to ensure treatment is medically necessary. The medical management requirement impartially applies independent professional medical or clinical standards in a manner that qualifies for the exception in proposed 26 CFR 54.9812–1(c)(4)(i)(E), 29 CFR 2590.712(c)(4)(i)(E), and 45 CFR 146.136(c)(4)(i)(E). The plan does not rely on any other factors or evidentiary standards, and the processes, strategies, evidentiary standards, and other factors used in designing and applying the medical management requirement to mental health and substance use disorder benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, and other factors used in designing and applying the requirement with respect to medical/surgical benefits. Within the inpatient, out-of-network classification, the application of the medical management requirement results in a higher percentage of denials for mental health and substance use

[139] FAQs Part 39, Q6.

disorder claims than medical/surgical claims because the benefits were found to be medically necessary for a lower percentage of mental health and substance use disorder claims based on the impartial application of the independent professional medical or clinical standards by the NQTL.

The proposed new example would conclude that the plan does not violate 26 CFR 54.9812–1(c)(4), 29 CFR 2590.712(c)(4), and 45 CFR 146.136(c)(4) of these proposed rules. The medical management NQTL imposed on mental health and substance use disorder benefits does not violate the no more restrictive requirement or the relevant data evaluation requirements because the plan impartially applies independent professional medical or clinical standards for both medical/surgical benefits and mental health and substance use disorder benefits in a manner that qualifies for the exception under proposed 26 CFR 54.9812–1(c)(4)(i)(E) and (c)(4)(iv)(D), 29 CFR 2590.712(c)(4)(i)(E) and (c)(4)(iv)(D), and 45 CFR 146.136(c)(4)(i)(E) and (c)(4)(iv)(D), respectively. Moreover, the independent professional medical or clinical standards are not considered to be a discriminatory factor or evidentiary standard and, as written and in operation, the plan complies with the design and application requirements with respect to the NQTL, regardless of the fact that the application of the NQTL resulted in higher percentages of claim denials for mental health and substance use disorder benefits as compared to medical/surgical benefits.

Example 6—More restrictive prior authorization requirement; exception for impartially applied generally recognized independent professional medical or clinical standards not met. New proposed Example 6 would incorporate guidance issued in FAQs Part 34,[140] as well as these proposed rules. In this example, the provisions of a plan state that it applies independent professional medical and clinical standards consistent with generally accepted standards of care for setting prior authorization requirements for both medical/surgical and mental health and substance use disorder prescription drugs. The relevant generally recognized independent professional medical standard for treatment of opioid use disorder that the plan utilizes (the American Society of Addiction Medicine national practice guidelines) does not support prior authorization every 30 days for buprenorphine/naloxone. However, in operation, the plan requires prior authorization for buprenorphine/naloxone combination at each refill (every 30 days) for treatment of opioid use disorder.

In Example 6, the plan violates the no more restrictive requirement under 26 CFR 54.9812–1(c)(4)(i), 29 CFR 2590.712(c)(4)(i), and 45 CFR 146.136(c)(4)(i) of these proposed rules. The plan does not qualify for the proposed exception for independent professional medical or clinical standards, because although the provisions of the plan state that it applies independent professional medical and clinical standards, the plan deviates from the relevant standards with respect to prescription drugs to treat opioid use disorder. The prior authorization NQTL is applied to at least two-thirds of all medical/surgical benefits in the prescription drugs classification. The most common or frequent variation of this NQTL and, therefore, the predominant NQTL that applies to substantially all medical/surgical benefits in the classification is following generally recognized independent professional medical and clinical standards (consistent with generally accepted standards of care). The prior authorization requirements imposed on substance use disorder benefits are more restrictive than the predominant requirement applicable to substantially all medical/surgical benefits in the classification, because the plan imposes additional requirements on substance use disorder benefits that limit access to the full range of treatment options available for a condition or disorder under the plan or coverage as compared to medical/surgical benefits in the same classification. Because the plan violates the no more restrictive requirement under the proposed rules, the example does not analyze compliance with the design and application requirements or the relevant data evaluation requirements.

The Departments note that, if the NQTL satisfied the no more restrictive requirement, in compliance with proposed 26 CFR 54.9812–1(c)(4)(i), 29 CFR 2590.712(c)(4)(i), and 45 CFR 146.136(c)(4)(i), the clarification in FAQs Part 34 would still be relevant to this example. In that guidance, the Departments explained that, if the plan had used a Pharmacy and Therapeutics (P&T) committee to decide how to cover prescription drugs and to evaluate whether to follow or deviate from nationally recognized treatment guidelines for setting prior authorization requirements, this approach may not have violated MHPAEA. Nonetheless, as explained in the FAQs, use of the P&T committee would need to be evaluated for compliance with MHPAEA's NQTL requirements (for example, by evaluating whether the P&T committee is composed of comparable experts for mental health conditions and substance use disorders, as compared to the experts for medical/surgical conditions, and how these experts evaluated nationally recognized treatment guidelines in setting prior authorization requirements for medications for mental health conditions, substance use disorders, and medical/surgical conditions). Although this language on P&T committees has not been added to the text of this example, this guidance continues to apply.

Example 7—Impermissible NQTL imposed following a final determination of noncompliance and direction by Secretary. New proposed Example 7 would illustrate the application of the provisions of these proposed rules at 26 CFR 54.9812–1(c)(4)(vii), 29 CFR 2590.712(c)(4)(vii), and 45 CFR 146.136(c)(4)(vii). In this example, following an initial request by the Secretary for a plan's comparative analysis of an NQTL pursuant to proposed 26 CFR 54.9812–2(d), 29 CFR 2590.712–1(d), and 45 CFR 146.137(d), the plan submits a comparative analysis for the NQTL. After review of the comparative analysis, the Secretary makes an initial determination that the comparative analysis fails to demonstrate that the processes, strategies, evidentiary standards, or other factors used in designing and applying the NQTL to mental health or substance use disorder benefits in the relevant classification are comparable to, and applied no more stringently than, those used in designing and applying the limitation with respect to medical/surgical benefits in the classification. Pursuant to proposed 26 CFR 54.9812–2(d)(3), 29 CFR 2590.712–1(d)(3), and 45 CFR 146.137(d)(3), the plan submits a corrective action plan and additional comparative analyses within 45 calendar days after the initial determination, and the Secretary then determines that the additional comparative analyses do not demonstrate compliance with the requirements of proposed 26 CFR 54.9812–1(c)(4), 29 CFR 2590.712(c)(4), and 45 CFR 146.136(c)(4). The plan receives a final determination of noncompliance from the Secretary, which informs the plan that it is not in compliance with proposed 26 CFR 54.9812–1(c)(4), 29 CFR 2590.712(c)(4), and 45 CFR 146.136(c)(4) and directs the plan not to impose the NQTL by a certain date, unless and until the plan

[140] *See* FAQs Part 34, Q8.

demonstrates compliance to the Secretary or takes appropriate action to remedy the violation. As of that date, the plan makes no changes to its plan terms by that date and continues to impose the NQTL.

The proposed example would conclude that the plan violates the requirements of 26 CFR 54.9812–1(c)(4), 29 CFR 2590.712(c)(4), and 45 CFR 146.136(c)(4) by imposing the NQTL after the Secretary directs the plan not to impose the NQTL, pursuant to proposed 26 CFR 54.9812–1(c)(4)(vii), 29 CFR 2590.712(c)(4)(vii), and 45 CFR 146.136(c)(4)(vii).

Example 8—Provider network admission standards not more restrictive and compliant with requirements for design and application of NQTLs. The Departments propose to amend Example 7 of the 2013 final regulations (and redesignate it as Example 8) to better align the example with the amended requirements for NQTLs set forth in these proposed rules. In this example, as part of a plan's standards for provider admission to its network in the outpatient, in-network classification, any provider seeking to contract with the plan must have supervised clinical experience. As a result of that standard, master's level mental health therapists are required to obtain supervised clinical experience beyond their licensure to participate in the network, while master's level medical/surgical providers, psychiatrists and Ph.D.-level psychologists do not require additional experience beyond their licensure (because their licensure already requires supervised clinical experience). The plan collects and evaluates relevant data in a manner reasonably designed to assess the impact of the NQTL. This includes in-network and out-of-network utilization rates (including data related to provider claim submissions), network adequacy metrics (including time and distance data, and data on providers accepting new patients), and provider reimbursement rates (including as compared to billed charges). This data demonstrates that participants and beneficiaries seeking outpatient care are able to access outpatient, in-network mental health and substance use disorder providers at the same frequency as outpatient, in-network medical/surgical providers, that mental health and substance use disorder providers are active in the network and are accepting new patients to the same extent as medical/surgical providers, and that mental health and substance use disorder providers are within similar time and distances to plan participants and beneficiaries as are medical/surgical providers. This data also does not identify material differences in what the plan or issuer pays psychiatrists or non-physician mental health providers, compared to physicians or non-physician medical/surgical providers, respectively, both for the same reimbursement codes and as compared to Medicare rates. Material differences could suggest that, in operation, NQTLs related to methodologies for determining reimbursement rates are being applied in a non-comparable or more restrictive manner for mental health or substance use disorder services than medical/surgical services, resulting in a material difference in access.

The conclusion to Example 8 states that the plan does not violate 26 CFR 54.9812–1(c)(4), 29 CFR 2590.712(c)(4), and 45 CFR 146.136(c)(4) of these proposed rules. The standards for provider admission to the plan's network are applied to at least two-thirds of all medical/surgical benefits in the outpatient, in-network classification, as they apply to all medical/surgical benefits in the classification. Additionally, the most common or frequent variation of the NQTL (the predominant NQTL that applies to substantially all medical/surgical benefits) in the classification is having a certain number of years of supervised clinical experience. The conclusion notes that the standards for provider admission to the plan's network that are imposed with respect to mental health or substance use disorder benefits are no more restrictive, as written and in operation, than the predominant standards for provider admission applicable to substantially all medical/surgical benefits in the classification, because the standards do not limit access to the full range of treatment options available for a mental health condition or substance use disorder under the plan or coverage as compared to medical/surgical benefits. The requirement that providers have a certain number of years of supervised clinical experience that the plan relied on to design and apply the NQTL is not considered to discriminate against mental health or substance use disorder benefits, even though this results in the requirement that master's level mental health therapists obtain supervised clinical experience beyond their licensure, unlike master's level medical/surgical providers. In addition, as written and in operation, the processes, strategies, evidentiary standards, or other factors used in applying the NQTL to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical/surgical benefits in the classification. Finally, the plan collects and evaluates relevant data in a manner reasonably designed to assess the impact of the NQTL, which does not show material differences in access to in-network mental health and substance use disorder benefits as compared to in-network medical/surgical benefits in the classification.

Example 9—More restrictive requirement for primary caregiver participation applied to ABA therapy. As discussed earlier in this preamble, the Departments are proposing amendments clarifying in these proposed rules that ASD is a mental health condition under generally recognized independent standards of current medical practice. Thus, ASD is a mental health condition, and coverage for treatment for ASD is a mental health benefit as defined in 26 CFR 54.9812–1(a), 29 CFR 2590.712(a), and 45 CFR 146.136(a) of the 2013 final regulations and 26 CFR 54.9812–1(a)(2), 29 CFR 2590.712(a)(2), and 45 CFR 146.136(a)(2) of these proposed rules. In new proposed Examples 9 and 10, the Departments would illustrate the application of MHPAEA to ASD treatment, consistent with ASD being classified as a mental health condition. In proposed new Example 9, a plan generally applies medical necessity criteria in adjudicating claims for coverage of all outpatient, in-network medical/surgical and mental health and substance use disorder benefits, including ABA therapy for the treatment of ASD. The medical necessity criteria for coverage of ABA therapy requires evidence that the participant's or beneficiary's primary caregivers actively participate in ABA therapy, as documented by consistent attendance in parent, caregiver, or guardian training sessions. In adding this requirement, the plan deviates from independent professional medical or clinical standards, and there are no similar medical necessity criteria requiring evidence of primary caregiver participation to receive coverage for any medical/surgical benefits.

Proposed Example 9 would violate the no more restrictive requirement of these proposed rules. The conclusion notes that the plan applies medical necessity criteria to at least two-thirds of all outpatient, in-network medical/surgical benefits, as they apply to all medical/surgical benefits in the classification. The most common or

frequent variation of this NQTL (the predominant NQTL) that applies to substantially all medical/surgical benefits in the classification does not include the requirement to provide evidence that the participant's or beneficiary's primary caregivers actively participate in the treatment. The plan does not qualify for the exception in 26 CFR 54.9812–1(c)(4)(i)(E), 29 CFR 2590.712(c)(4)(i)(E), and 45 CFR 146.136(c)(4)(i)(E) of these proposed rules in applying its restriction on coverage for ABA therapy because the plan deviates from the independent professional medical or clinical standards by imposing a different requirement that does not comport with independent professional medical or clinical standards (consistent with generally accepted standards of care). The proposed new example would conclude that the plan's treatment of ABA therapy and the imposition of the additional requirement to provide evidence that primary caregivers actively participate in treatment violates proposed 26 CFR 54.9812–1(c)(4)(i), 29 CFR 2590.712(c)(4)(i), and 45 CFR 146.136(c)(4)(i) because the NQTL imposed on mental health and substance use disorder benefits in the example is more restrictive than the predominant medical necessity requirement imposed on substantially all medical/surgical benefits (which does not include the requirement to provide evidence that primary caregivers actively participate in treatment). Because the plan violates the no more restrictive requirement, the example does not analyze compliance with the design and application requirements or the relevant data evaluation requirements of these proposed rules.

Example 10—More restrictive exclusion for experimental or investigative treatment applied to ABA therapy. Proposed new Example 10 would incorporate guidance issued as part of FAQs Part 39.[141] In this example, a plan, as written, generally excludes coverage for all treatments that are experimental or investigative for medical conditions and surgical procedures, mental health conditions, and substance use disorders in the outpatient, in-network classification. As a result, the plan generally excludes experimental treatment of medical conditions and surgical procedures, mental health conditions, and substance use disorders when no professionally recognized treatment guidelines define clinically appropriate standards of care for the condition or disorder, and fewer than two randomized controlled trials are available to support the treatment's use with respect to the given condition or disorder. The plan provides benefits for the treatment of ASD, which is a mental health condition, but in operation, the plan excludes coverage for ABA therapy to treat children with ASD, deeming it experimental. More than one professionally recognized treatment guideline defines clinically appropriate standards of care for ASD and more than two randomized controlled trials are available to support the use of ABA therapy to treat certain children with ASD.

In this proposed new example, the coverage exclusion for experimental or investigative treatment applies to at least two-thirds of all medical/surgical benefits, as it applies to all outpatient medical/surgical benefits in the outpatient, in-network classification. The most common or frequent variation of this NQTL and, therefore, the predominant NQTL applicable to substantially all medical/surgical benefits is the exclusion under the plan for coverage of experimental treatment of medical conditions and surgical procedures when no professionally recognized treatment guidelines define clinically appropriate standards of care for the condition or disorder and fewer than two randomized controlled trials are available to support the treatment's use with respect to the given condition or procedure. In operation, the exclusion for experimental or investigative treatment imposed on ABA therapy is more restrictive than the predominant variation of the NQTL for experimental or investigative treatment imposed on substantially all medical/surgical benefits in the classification because the exclusion limits access to the full range of treatment options available for a mental health condition under the plan as compared to medical/surgical benefits. This is the case, despite the fact that the requisite number of professionally recognized treatment guidelines and randomized controlled trials support its use to treat certain children with ASD. Therefore, the plan's application of the experimental exclusion to ABA therapy violates the no more restrictive requirement in 26 CFR 54.9812–1(c)(4)(i), 29 CFR 2590.712(c)(4)(i), and 45 CFR 146.136(c)(4)(i), and the example does not analyze compliance with the design and application requirements or the relevant data evaluation requirements under these proposed rules.

Example 11—Separate EAP exhaustion treatment limitation applicable only to mental health benefits. The Departments also propose to amend Example 6 of the 2013 final regulations and redesignate it as Example 11. In this example, the employer maintains both a major medical plan and an employee assistance plan (EAP). The EAP provides, among other benefits, a limited number of mental health or substance use disorder counseling sessions, which, together with other benefits provided by the EAP, are not significant benefits in the nature of medical care. Participants are eligible for mental health and substance use disorder benefits under the employer's major medical coverage only after exhausting the counseling sessions provided by the EAP. No similar exhaustion requirement applies with respect to medical/surgical benefits provided under the major medical plan.

In this example, limiting eligibility for mental health and substance use disorder benefits under the major medical plan until EAP benefits are exhausted is an NQTL subject to MHPAEA and violates these proposed rules. Because the limitation does not apply to medical/surgical benefits, it is a separate NQTL applicable only to mental health and substance use disorder benefits, which violates 26 CFR 54.9812–1(c)(4)(vi), 29 CFR 2590.712(c)(4)(vi), and 45 CFR 146.136(c)(4)(vi) of these proposed rules. The Departments also note that this EAP would generally not qualify as excepted benefits as set forth in the final excepted benefits rules (published after the 2013 final regulations).[142] Under those rules, the benefits provided under an EAP are excepted if the EAP does not provide significant benefits in the nature of medical care, the benefits under the EAP are not coordinated with benefits under another group health plan, no employee premiums or contributions are required as a condition of participation in the EAP, and there is no cost sharing under the EAP. In this example, the benefits under the EAP are coordinated with the benefits of another group health plan, since participants in the major medical group health plan are required to use and exhaust benefits under the EAP (making the EAP a gatekeeper) before an individual is eligible for benefits under the major medical plan.

Example 12—Separate residential exclusion treatment limitation applicable only to mental health benefits. Proposed new Example 12 would demonstrate that MHPAEA

[141] *See* FAQs Part 39, Q1.

[142] 26 CFR 54.9831–1(c)(3)(vi)(B)(*1*), 29 CFR 2590.732(c)(3)(vi)(B)(*1*), and 45 CFR 146.145(b)(3)(vi)(B)(*1*); 79 FR 59130 (Oct. 1, 2014).

specifically prohibits separate treatment limitations that are applicable only with respect to mental health or substance use disorder benefits. In this example, a plan generally covers inpatient, in-network and inpatient, out-of-network treatment in any setting, including skilled nursing facilities and rehabilitation hospitals, provided other medical necessity standards are satisfied. The plan also has an exclusion for residential treatment, which the plan defines as an inpatient benefit, for mental health and substance use disorder benefits. This exclusion was not generated through any broader NQTL (such as medical necessity or other clinical guideline). The proposed new example would conclude that the plan violates 26 CFR 54.9812–1(c)(4)(vi), 29 CFR 2590.712(c)(4)(vi), and 45 CFR 146.136(c)(4)(vi) of these proposed rules. Because the plan does not apply a comparable exclusion to inpatient benefits for medical/surgical conditions, the exclusion of residential treatment is a separate NQTL applicable only to mental health and substance use disorder benefits in the inpatient, in-network and inpatient, out-of-network classifications that does not apply with respect to any medical/surgical benefits in the same benefit classifications.

Example 13—Standards for provider admission to a network. Finally, proposed new Example 13 would illustrate how plans and issuers may comply with these proposed rules with regard to parity, including the requirement to collect and evaluate data, with respect to standards related to network composition, including standards for provider and facility admission to participate in a network or for continued network participation, methods for determining reimbursement rates, credentialing standards, and procedures for ensuring the network includes an adequate number of each category of providers and facilities to provide covered services under the plan or coverage. As highlighted above, the proper design, administration, and composition of networks are essential to participants and beneficiaries having access to treatment for mental health conditions and substance use disorders in parity with access to treatment for medical conditions and surgical procedures, and this proposed example illustrates the steps that plans and issuers may take to improve such access.

In this proposed new example, a plan applies NQTLs related to network composition in the outpatient, in-network and inpatient, in-network classifications. The plan's networks are constructed by separate service providers for medical/surgical benefits and mental health and substance use disorder benefits. The facts of the example stipulate that the plan's NQTLs related to network composition for mental health and substance use disorder benefits satisfy the no more restrictive requirement and the design and application requirements in the outpatient, in-network and inpatient, in-network classifications. It further stipulates that the plan collects and evaluates all relevant data in a manner reasonably designed to assess the impact of the NQTLs related to network composition on access to mental health and substance use disorder benefits as compared with medical and surgical benefits and considers the impact as part of the plan's analysis of whether the NQTLs, in operation, comply with the no more restrictive requirement and the design and application requirements of these proposed rules.

The plan determined that the data did not reveal any material differences in access. That data included metrics relating to the time and distance from plan participants and beneficiaries to network providers in rural and urban regions; the number of network providers accepting new patients; the proportions of mental health and substance use disorder and medical/surgical providers and facilities that provide services in rural and urban regions who are in the plan's network; provider reimbursement rates; in-network and out-of-network utilization rates (including data related to the dollar value and number of provider claims submissions); and survey data from participants on the extent to which they forgo or pay out-of-pocket for treatment because of challenges finding in-network providers. The efforts the plan made when designing and applying its NQTLs related to network composition, which ultimately led to its outcomes data not revealing any material differences in access to benefits for mental health or substance use disorders as compared with medical/surgical benefits, included making sure that the plan's service providers are making special efforts to enroll available providers, including by authorizing greater compensation or other inducements to the extent necessary, and expanding telehealth arrangements as appropriate to manage regional shortages. The plan also notifies participants in clear and prominent language on its website, employee brochures, and the summary plan description of a toll-free number available to help participants find in-network providers. In addition, when plan participants submit bills for out-of-network items and services, the plan directs their service providers to reach out to the treating providers and facilities to see if they will enroll in the network.

The proposed new example would conclude that the plan does not violate 26 CFR 54.9812–1(c)(4), 29 CFR 2590.712(c)(4), or 45 CFR 146.136(c)(4). The plan's NQTLs related to network composition comply with the no more restrictive requirement, the design and application requirements, and the relevant data evaluation requirements and the data does not reveal any material differences in access to mental health and substance use disorder benefits as compared to medical/surgical benefits, as a result of the actions the plan took (as set forth in the facts) when initially designing its NQTLs related to network composition

Because the plan takes comparable actions to ensure that its mental health and substance use disorder provider network is as accessible as its medical/surgical provider network and exercises careful oversight over its service providers and the comparative robustness of the networks with an eye to ensuring that network composition results in access to in-network benefits for mental health and substance use disorder services,, plan participants and beneficiaries can access covered mental health and substance use disorder services and benefits as readily as medical/surgical benefits. This is reflected in the plan's carefully designed metrics and assessment of network composition. The Departments recognize, however, that there are significant challenges to building networks of mental health and substance use disorder providers that result in parity. If, despite taking such comprehensive action in accordance with the requirements of proposed 26 CFR 54.9812–1(c)(4)(iv)(C), 29 CFR 2590.712(c)(4)(iv)(C), and 45 CFR 146.136(c)(4)(iv)(C), a plan's or issuer's participants, or beneficiaries still experience materially greater reliance on out-of-network, rather than in-network, mental health or substance use disorder benefits because of provider shortages that the plan or issuer cannot effectively address through no fault of its own, the Departments would not treat the plan or issuer as in violation of 26 CFR 54.9812–1(c)(4), 29 CFR 2590.712(c)(4), and 45 CFR 146.136(c)(4), provided that the plan or issuer is otherwise in compliance with the requirements of these sections.

The Departments solicit comments on these proposed amended and added examples, including with respect to

how these proposed examples illustrate the application of the provisions of these proposed rules related to NQTLs. The Departments also solicit comments on any additional examples that might be helpful to interested parties with respect to any specific provision of these proposed rules applicable to NQTLs or any specific NQTLs that apply to mental health and substance use disorder benefits.

4. Prohibition on Financial Requirements and Treatment Limitations

Applicable Only to Mental Health or Substance Use Disorder Benefits—26 CFR 54.9812–1(c)(2)(i) and (c)(4)(vi), 29 CFR 2590.712(c)(2)(i) and (c)(4)(vi), and 45 CFR 146.136(c)(2)(i) and (c)(4)(vi)

The Departments propose to amend the general parity requirement set forth in 26 CFR 54.9812–1(c)(2)(i), 29 CFR 2590.712(c)(2)(i), and 45 CFR 146.136(c)(2)(i) by adding a sentence to reiterate that a plan or issuer may not impose any financial requirement or treatment limitation that is applicable only with respect to mental health or substance use disorder benefits and not to any medical/surgical benefits in the same benefit classification. The general parity requirement set forth in paragraph (c)(2)(i) provides that a plan or issuer that provides both medical/surgical benefits and mental health or substance use disorder benefits may not apply any financial requirement or treatment limitation to mental health or substance use disorder benefits in any classification that is more restrictive than the predominant financial requirement or treatment limitation of that type applied to substantially all medical/surgical benefits in the same classification. The general parity requirement also states that the application of paragraph (c)(2) to financial requirements and quantitative treatment limitations is addressed in paragraph (c)(3) of the regulations; the application of paragraph (c)(2) to NQTLs is addressed in paragraph (c)(4) of the regulations.

Code section 9812(a)(3)(A)(i), ERISA section 712(a)(3)(A)(i), and PHS Act section 2726(a)(3)(A)(i) specifically prohibit separate cost sharing requirements that are applicable only with respect to mental health or substance use disorder benefits, and Code section 9812(a)(3)(A)(ii), ERISA section 712(a)(3)(A)(ii), and PHS Act section 2726(a)(3)(A)(ii) specifically prohibit separate treatment limitations that are applicable only with respect to mental health or substance use disorder benefits. While the text of the 2013 final regulations does not explicitly incorporate these statutory prohibitions, financial requirements and quantitative treatment limitations that are imposed only with respect to mental health or substance use disorders could not meet the substantially all or predominant standards in the parity requirements contained in paragraph (c)(3) of 26 CFR 54.9812–1, 29 CFR 2590.712, and 45 CFR 146.136, as adopted in the 2013 final regulations. Moreover, an example in the 2013 final regulations demonstrates and affirms that an NQTL applied only to mental health or substance use disorder benefits would not be permissible.[143] These proposed amendments to the general parity requirement set forth in 26 CFR 54.9812–1(c)(2)(i), 29 CFR 2590.712(c)(2)(i), and 45 CFR 146.136(c)(2)(i) would directly incorporate the statutory prohibitions by expressly stating that plans and issuers are not permitted to impose any kind of financial requirement or treatment limitation that applies only to mental health or substance use disorder benefits and not to medical/surgical benefits in the same classification.

Because the general parity requirement set forth in 26 CFR 54.9812–1(c)(2)(i), 29 CFR 2590.712(c)(2)(i), and 45 CFR 146.136(c)(2)(i) of the 2013 final regulations also states that the application of paragraph (c)(2) to NQTLs is addressed in paragraph (c)(4) of the regulations, the Departments also propose to add similar language to these proposed rules for NQTLs at 26 CFR 54.9812–1(c)(4)(vi), 29 CFR 2590.712(c)(4)(vi), and 45 CFR 146.136(c)(4)(vi), which cross-references the language proposed to be added to paragraph (c)(2)(i). This proposed language would state that a plan or issuer may not apply any NQTL that is applicable only with respect to mental health or substance use disorder benefits and not with respect to any medical/surgical benefits in the same benefit classification. For this purpose, an exclusion of benefits for a mental health condition or substance use disorder in a classification that is merely an expression of another NQTL, such as medical necessity requirements or experimental or investigational exclusions, that is applied with respect to medical/surgical benefits in the same classification would not be considered a separately applicable treatment limitation. For example, a plan's exclusion of coverage for ABA therapy is not an expression of a broader NQTL if it was not generated through a process or strategy, or informed by an evidentiary standard of, a broader NQTL like medical necessity. As a result, such an NQTL would be evaluated under 26 CFR 54.9812–1(c)(4), 29 CFR 2590.712(c)(4), and 45 CFR 146.136(c)(4) to determine whether such NQTL is permitted.

The Departments solicit comments on this proposal.

5. Other Proposed Amendments

The Departments propose to amend 26 CFR 54.9812–1(c)(2)(ii), 29 CFR 2590.712(c)(2)(ii), and 45 CFR 146.136(c)(2)(ii) to specify that if a plan or issuer provides any benefits for a mental health condition or substance use disorder in any classification of benefits, benefits for that mental health condition or substance use disorder must be provided in every classification in which medical/surgical benefits are provided. For this purpose, if a plan or issuer provides any benefits for a mental health condition or substance use disorder in any classification of benefits, the plan or issuer would not be considered to provide benefits for the mental health condition or substance use disorder in every classification in which medical/surgical benefits are provided unless the plan or issuer provides meaningful benefits for treatment for that condition or disorder in each classification, as determined in comparison to the benefits provided for medical/surgical conditions in such classification. This requirement would ensure that, when plans and issuers cover benefits for a range of services or treatments for medical/surgical conditions in a classification, plans and issuers cannot provide, for example, only one limited benefit for a mental health condition or substance use disorder in that classification. The Departments request comments on this proposal, including whether and how to define ''meaningful benefits'' for purposes of this provision as well as other potential alternatives. For example, the Departments request comments on whether it would be more practical to require plans and issuers to provide ''substantial coverage'' of mental health and substance use disorder benefits or benefits for the ''primary or most common or frequent types of treatment for a covered condition or disorder'' in each classification in which medical/surgical benefits are provided, and if so, how to define and make comparisons about

[143] *See* 26 CFR 54.9812–1(c)(4)(iii) Ex. 6, 29 CFR 2590.712(c)(4)(iii) Ex. 6, and 45 CFR 146.136(c)(4)(iii) Ex. 6. The Departments are proposing to renumber this example, and to add a clarification on interaction with the Departments' group market excepted benefit rules, but otherwise propose to leave this example unamended.

what constitutes ''substantial coverage'' or the ''primary or most common or frequent types of treatment'' for medical/surgical and mental health or substance use disorder benefits.

The preamble of the 2013 final regulations addressed an issue characterized as ''scope of services'' or ''continuum of care.''[144] Scope of services generally refers to the types of treatments and treatment settings that are covered by a group health plan or health insurance coverage. The preamble to the 2013 final regulations explained that plans and issuers must assign mental health and substance use disorder benefits and medical/surgical benefits to the six classifications of benefits in a consistent manner, and explained that this rule also generally applies to benefits for intermediate levels of care provided under the plan or coverage.[145] The 2013 regulations further explained that plan or coverage exclusions affecting the scope of services provided under the plan or coverage, such as restrictions based on geographic location, facility type, and provider specialty, among others, must comply with the NQTL parity standard. The Departments recognize that the proposal to require meaningful benefits for mental health and substance use disorder services in a classification is related to scope of services and request comments on whether additional guidance is needed regarding how this proposed requirement would interact with the approach related to scope of services adopted under the 2013 final regulations.

As mentioned above, the proposed amendments to 26 CFR 54.9812–1(c)(2)(ii), 29 CFR 2590.712(c)(2)(ii), and 45 CFR 146.136(c)(2)(ii) would also state that, if a plan provides any benefits for a mental health condition or substance use disorder, benefits would be required to be provided for *that condition or disorder* in each classification for which any medical/surgical benefits are provided. This proposed language would make explicit in the regulations the Departments' interpretation that the requirement to provide coverage in each classification in which medical/surgical benefits are provided applies on a condition or disorder basis, an interpretation that the Departments have held since the interim final rules.[146] The Departments solicit comments on these provisions of these proposed rules on classifications of benefits, including whether additional flexibility is needed to account for benefits that are difficult to place into classifications under the current structure, and whether additional guardrails or protections should be required.

The Departments propose to add two additional examples to 26 CFR 54.9812–1(c)(2)(ii)(C), 29 CFR 2590.712(c)(2)(ii)(C), and 45 CFR 146.136(c)(2)(ii)(C) to illustrate the application of these proposed amendments to the rules. Proposed Example 5 would involve a plan that generally covers treatment for ASD, a mental health condition, and covers outpatient, out-of-network developmental evaluations for ASD but excludes all other benefits for outpatient treatment for ASD, including ABA therapy, when provided on an out-of-network basis. Based on independent standards of current medical practice, ABA therapy is one of the primary treatments for ASD in children. In this proposed example, the plan generally covers the full range of outpatient treatments and treatment settings for medical conditions and surgical procedures when provided on an out-of-network basis. This proposed example provides that the plan would violate the proposed rules in 26 CFR 54.9812–1(c)(2)(ii), 29 CFR 2590.712(c)(2)(ii), and 45 CFR 146.136(c)(2)(ii) because it fails to provide meaningful benefits for treatment of ASD in the outpatient, out-of-network classification, as determined in comparison to the benefits provided for medical/surgical conditions in the classification.

Under proposed Example 6, a plan generally covers diagnosis and treatment for eating disorders, a mental health condition, but specifically excludes coverage for nutrition counseling to treat eating disorders, including in the outpatient, in-network classification. Nutrition counseling is one of the primary treatments for eating disorders. The plan generally provides benefits for the primary treatments for medical conditions and surgical procedures in the outpatient, in-network classification. In this proposed example, the exclusion of coverage for nutrition counseling for eating disorders results in the plan failing to provide meaningful benefits for the treatment of eating disorders in the outpatient, in-network classification, as determined in comparison to the benefits provided for medical/surgical conditions in the classification. Therefore, the plan violates the proposed rules in 26 CFR 54.9812–1(c)(2)(ii), 29 CFR 2590.712(c)(2)(ii), and 45 CFR 146.136(c)(2)(ii). The Departments note that, if the plan covers medical/surgical benefits for nutritional counseling, this plan would also violate the proposed rules in 26 CFR 54.9812–1(c)(4)(vi), 29 CFR 2590.712(c)(4)(vi), and 45 CFR 146.136 (c)(4)(vi) prohibiting separate NQTLs applicable only to mental health or substance use disorder benefits.

The 2013 final regulations set forth the only classifications of benefits that may be used in applying the parity rules for financial requirements and treatment limitations, and listed specific instances when a plan or issuer may divide benefits into sub-classifications beyond the six classifications permitted in paragraph (c)(2)(ii)(A) of the 2013 final regulations. Specifically, a plan (or health insurance coverage) may apply different levels of financial requirements to different tiers of prescription drug benefits based on reasonable factors determined in accordance with the rules in 26 CFR 54.9812–1(c)(4), 29 CFR 2590.712(c)(4), and 45 CFR 146.136(c)(4) and without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits. Additionally, if a plan or issuer provides benefits through multiple tiers of in-network providers (such as an in-network tier of other preferred providers with more generous cost-sharing than a separate in-network tier of participating providers), the plan may divide its benefits furnished on an in-network basis into sub-classifications that reflect network tiers, if the tiering is based on reasonable factors determined in accordance with the rules in 26 CFR 54.9812–1(c)(4), 29 CFR 2590.712(c)(4), and 45 CFR 146.136(c)(4) (such as quality, performance, and market standards) and without regard to whether a provider provides services with respect to medical/surgical benefits or mental health or substance use disorder benefits.[147] A plan or issuer is also permitted to divide its benefits furnished on an outpatient basis into two sub-classifications: (1) office visits (such as physician visits), and (2) all other outpatient items and services (such as outpatient surgery, facility charges for day treatment centers,

[144] 78 FR 68240, 68246–7 (Nov. 13, 2013).

[145] The preamble to the 2013 final regulations stated, ''For example, if a plan or issuer classifies care in skilled nursing facilities or rehabilitation hospitals as inpatient benefits, then the plan or issuer must likewise treat any covered care in residential treatment facilities for mental health or substance user disorders as an inpatient benefit. In addition, if a plan or issuer treats home health care as an outpatient benefit, then any covered intensive outpatient mental health or substance use disorder services and partial hospitalization must be considered outpatient benefits as well.'' 78 FR 68240, 68247 (Nov. 13, 2013).

[146] 75 FR 5410, 5413 (Feb. 2, 2010).

[147] 26 CFR 54.9812–1(c)(3)(iii)(B), 29 CFR 2590.712(c)(3)(iii)(B), and 45 CFR 146.136(c)(3)(iii)(B).

laboratory charges, or other medical items).[148] These proposed rules at 26 CFR 54.9812–1(c)(2)(ii)(A), 29 CFR 2590.712(c)(2)(ii)(A), and 45 CFR 146.136(c)(2)(ii)(A) would clarify that plans and issuers may use the permissible sub-classifications under the 2013 final regulations when applying all of the rules for financial requirements and treatment limitations, including NQTLs.

After any of these permissible sub-classifications are established, a plan or issuer may not impose any financial requirement or quantitative treatment limitation on mental health or substance use disorder benefits in any sub-classification that is more restrictive than the predominant financial requirement or quantitative treatment limitation that applies to substantially all medical/surgical benefits in the sub-classification. These proposed rules would clarify at 26 CFR 54.9812–1(c)(3)(iii), 29 CFR 2590.712(c)(3)(iii), and 45 CFR 146.136(c)(3)(iii) that plans and issuers are not permitted to divide benefits into any sub-classifications other than those specifically permitted under this paragraph. While this proposed amendment would not make any substantive changes to the existing rule, the Departments are proposing to make these regulatory amendments to further reiterate that plans and issuers are not permitted to sub-divide the classifications other than as described in paragraph (c)(3)(iii).

The Departments have received questions and requests for guidance on how to comply with MHPAEA's requirements with respect to telehealth benefits. Specifically, some of these questions have asked where telehealth fits into the existing classifications and sub-classifications of benefits, and whether changes to the Departments' framework and existing regulations implementing MHPAEA are necessary to account for telehealth benefits. The Departments are not proposing to make any changes to the classifications and sub-classifications other than the proposed amendments described in the prior paragraph. The Departments expect plans and issuers to treat telehealth benefits the same way they treat those benefits when provided in person in determining the classification or sub-classification in which a particular benefit belongs and in ensuring compliance with the requirements of MHPAEA, as required under the 2013 final rules. The Departments request comment on issues related to telehealth later in this preamble.

Treasury and DOL also propose to amend 26 CFR 54.9812–1(d)(3) and 29 CFR 2590.712(d)(3) by adding cross-references to proposed 26 CFR 54.9812–2 and 29 CFR 2590.712–1. This amendment would clarify the comparative analyses and any other applicable information required under the CAA, 2021 are considered to be instruments under which a plan is established or operated, and therefore, ERISA plans generally must furnish those documents to plan participants and beneficiaries upon request within 30 days, as required under section 104 of ERISA and 29 CFR 2520.104b–1. Additionally, the Departments propose to amend 26 CFR 54.9812–1(d)(3), 29 CFR 2590.712(d)(3), and 45 CFR 146.136(d)(3) to clarify that the comparative analyses and any other applicable information required under the CAA, 2021 and these proposed rules qualify as documents, records, and other information relevant to the claimant's claim for benefits to which plans and issuers must provide reasonable access, upon request and free of charge. This clarification is consistent with new proposed 26 CFR 54.9812–2(e)(2), 29 CFR 2590.712–1(e)(2), and 45 CFR 146.137(e)(2), discussed later in this preamble, which generally would require plans and issuers to make available the comparative analyses required to be performed and documented under the CAA, 2021 when requested by participants and beneficiaries in ERISA plans, including by a provider or other person acting as a participant's or beneficiary's authorized representative. These comparative analyses are instruments under which the plan is established and operated, and participants and beneficiaries should be able to request this information in order to ensure they are informed about their health plans or group health insurance coverage. Additionally, these comparative analyses would be relevant to a claimant's claim for benefits and should therefore be available to participants or beneficiaries, and providers or other individuals acting as a participant's or beneficiary's authorized representative.

Finally, the Departments propose to amend 26 CFR 54.9812–1(e)(4), 29 CFR 2590.712(e)(4), and 45 CFR 146.136(e)(4) to include a reference to 26 CFR 54.9812–2(g), 29 CFR 2590.712–1(g), and 45 CFR 146.137(g) and to reflect current HHS regulations at 45 CFR 156.115(a)(3). Existing regulations at 26 CFR 54.9812–1(e)(4), 29 CFR 2590.712(e)(4), and 45 CFR 146.136(e)(4) state that nothing in paragraphs (f) and (g) of the 2013 final regulations related to MHPAEA's small employer exemption and increased cost exemption, respectively, changes the requirement under HHS regulations at 45 CFR 147.150 and 156.115, providing that a health insurance issuer offering non-grandfathered health insurance coverage in the individual or small group market providing mental health and substance use disorder services, including behavioral health treatment services, must comply with the provisions of 45 CFR 146.136 to satisfy the requirement to provide essential health benefits (EHBs). HHS has updated 45 CFR 156.115(a)(3) to state that provision of essential health benefits means that a health plan provides benefits that ''[w]ith respect to the mental health and substance use disorder services, including behavioral health treatment services, required under § 156.110(a)(5), comply with the requirements under section 2726 of the Public Health Service Act and its implementing regulations.'' [149] Therefore, to be consistent with the language contained in 45 CFR 156.115(a)(3), and to ensure that the cross-reference between the Departments' MHPAEA implementing regulations and HHS' EHB implementing regulations includes the requirement to comply with the provisions on comparative analyses, the Departments propose to amend 26 CFR 54.9812–1(e)(4), 29 CFR 2590.712(e)(4), and 45 CFR 146.136(e)(4) to state that nothing in paragraph (f) or (g) of those sections, or in proposed 26 CFR 54.9812–2(g), 29 CFR 2590.712–1(g), or 45 CFR 146.136–1(g), would change the requirements of 45 CFR 147.150 and 156.115, providing that a health insurance issuer offering non-grandfathered health insurance coverage in the individual or small group market providing mental health and substance use disorder services, including behavioral health treatment services, as part of essential health benefits required under 45 CFR 156.110(a)(5) and 156.115(a), must comply with the requirements under section 2726 of the PHS Act and its implementing regulations to satisfy the requirement to provide coverage for mental health and substance use disorder services,

[148] 26 CFR 54.9812–1(c)(3)(iii)(C), 29 CFR 2590.712(c)(3)(iii)(C), and 45 CFR 146.136(c)(3)(iii)(C).

[149] Patient Protection and Affordable Care Act; Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets for 2022 and Beyond, 86 FR 53412 (September 27, 2021), available at *https://www.federalregister.gov/documents/2021/09/27/2021-20509/patient-protection-and-affordable-care-act-updating-payment-parameters-section-1332-waiver.*

including behavioral health treatment, as part of essential health benefits.

The Departments solicit comments on these proposals. Additionally, the Departments request comments on whether there are any other steps the Departments can take to promote compliance with these proposed rules or other provisions of MHPAEA, and what other guidance or technical support from the Departments would be helpful to ensuring compliance with MHPAEA.

B. New Regulations at 26 CFR 54.9812–2, 29 CFR 2590.712–1, and 45 CFR 146.137

As explained earlier in this preamble, the CAA, 2021 amended MHPAEA, in part, to expressly require plans and issuers that offer both medical/surgical benefits and mental health or substance use disorder benefits and impose NQTLs on mental health or substance use disorder benefits to perform and document their comparative analyses of the design and application of NQTLs, and make their comparative analyses available to the Departments or applicable State authorities upon request.[150] On April 2, 2021, the Departments issued FAQs Part 45 to provide guidance on the amendments to MHPAEA made by the CAA, 2021, including the NQTL comparative analyses requirements. Since the issuance of this guidance, interested parties have requested additional guidance and clarifications on the NQTL comparative analysis requirements. In addition to the proposed amendments to existing provisions of the MHPAEA regulations outlined earlier in this preamble, these proposed rules would, using the definitions indicated in 26 CFR 54.9812–1(a)(2), 29 CFR 2590.712(a)(2), and 45 CFR 146.136(a)(2), codify in regulations the requirement that a plan or issuer that imposes any NQTL on mental health or substance use disorder benefits must perform and document comparative analyses of the design and application of all NQTLs, consistent with Code section 9812(a)(8)(A), ERISA section 712(a)(8)(A), and PHS Act section 2726(a)(8)(A). The new proposed rules also set forth the content requirements for NQTL comparative analyses, including the proposed requirement that plans and issuers include and evaluate relevant data as part of their comparative analyses to ensure compliance with MHPAEA.

The Departments are proposing these content requirements in response to requests from interested parties for more details on how plans and issuers should perform and document comparative analyses and based on lessons learned by the Departments from conducting NQTL comparative analysis reviews since the effective date of the comparative analysis requirement. The proposed additional content requirements are designed to ensure that the comparative analyses focus on the statutory standards and promote parity. The proposal includes specific information and data that plans and issuers would be required to incorporate in each comparative analysis with respect to an NQTL, and the factors and evidentiary standards used to design or apply the NQTL; how plans and issuers would be required to demonstrate in their analysis that, under the terms of their plan or coverage, as written and in operation, any processes, strategies, evidentiary standards, or other factors used in designing and applying the NQTL to mental health or substance use disorder benefits are comparable to, and are applied no more stringently than those used with respect to medical/surgical benefits; and what findings and conclusions would be required to be addressed. These proposed rules would also set forth details with respect to when and how plans and issuers would be required to make those comparative analyses available upon request to the Departments or the applicable State authority, and propose when and how plans and issuers would be required to make comparative analyses available upon request to a participant, beneficiary, or their authorized representative, including the timeframes and procedures for plans and issuers to provide additional information to the requesting Department or an applicable State authority, provide a corrective action plan,[151] and notify participants and beneficiaries of a final determination of noncompliance. For purposes of this proposed provision, the term ''applicable State authority'' has the same meaning as under PHS Act section 2791(d)(I) and 45 CFR 144.103, which is, with respect to a health insurance issuer in a State, the State insurance commissioner or official or officials designated by the State to enforce the requirements title of title XXVII of the PHS Act for the State involved with respect to the issuer.

The Departments request comments on all aspects of these proposed rules contained in 26 CFR 54.9812–2, 29 CFR 2590.712–1, and 45 CFR 146.137, including what additional clarifications would help plans and issuers perform and document sufficient comparative analyses and submit those analyses to the Secretary or applicable State authority upon request. In addition, the Departments are interested in feedback related to the challenges plans and issuers face obtaining the necessary information to perform and document a sufficient comparative analysis. The requirement to perform and document comparative analyses under Code section 9812(a)(8), ERISA section 712(a)(8), and PHS Act section 2726(a)(8) is generally applicable to group health plans and issuers offering group or individual health insurance coverage. The Departments are aware that plans and issuers contract with managed behavioral health organizations (MBHOs), third-party administrators (TPAs), or other service providers to provide or administer mental health or substance use disorder benefits.[152] The preamble to the 2013 final regulations notes that the fact that an employer or issuer contracts with one or more entities to provide or administer mental health or substance use disorder benefits or other benefits does not relieve the employer, issuer, or both of their obligations under MHPAEA.[153] Plans and issuers should have clear protocols and processes in place to ensure that the MBHOs and other TPAs for both medical/surgical and mental health and substance use disorder benefits provide sufficient information regarding plan structure and benefits to each other and the plans and issuers that they serve to ensure that the mental health and substance use disorder benefits are coordinated with the medical/surgical benefits for purposes of compliance with MHPAEA.[154]

The Departments understand that, in practice, plan sponsors often rely on the issuer of fully-insured plans, TPAs of self-insured plans, and other service providers to administer their benefits, including designing and implementing

[150] Code section 9812(a)(8)(A), ERISA section 712(a)(8)(A), and PHS Act section 2726(a)(8)(A).

[151] The contents of a corrective action plan will vary from one case to another, but such corrective action plans will generally be required to contain certain basic elements including: (1) identification of the noncompliant NQTL at issue, (2) proposed approaches to address this noncompliance, including strategies to provide relief to beneficiaries and participants who were adversely affected, (3) a timeline for implementation, (4) potential constraints or sources of delay that could adversely affect timely implementation, (5) points of contact for corrective action plan implementation, and (6) any other components deemed necessary by the Departments. When a plan or issuer submits a corrective action plan to the Departments, the plan shall be reviewed for completeness and sufficiency.

[152] 78 FR 68239, 68250 (Nov. 13, 2013).

[153] *Ibid.*

[154] 2020 MHPAEA Self-Compliance Tool, available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/self-compliance-tool.pdf.*

the limitations and coverage terms that are subject to MHPAEA requirements and providing them with comparative analyses (or detailed information to inform the development of comparative analyses) for the NQTLs that the issuers, TPAs, and service providers themselves design and apply to mental health and substance use disorder benefits and medical/surgical benefits under the terms of the plan or coverage. While the States and HHS have enforcement authority over issuers providing health insurance coverage with respect to fully-insured plans,[155] the Departments have limited direct enforcement authority over other service providers (including, for example, an MBHO or the TPA or TPAs of a self-insured health plan).[156] However, under ERISA, such service providers may be fiduciaries with respect to private employment-based group health plans. To the extent such service providers are fiduciaries for private employment-based plans, they are subject to the provisions governing fiduciary conduct and liability, including the provisions for co-fiduciary liability under ERISA section 405. The Departments are committed to using all available authority to ensure compliance by plans and issuers with MHPAEA for all entities that play a role in administering and designing benefits. The Departments solicit comments on how best to ensure all the entities involved in the design and administration of a group health plan's benefits provide the necessary information to plans and issuers to support their efforts to comply with MHPAEA.

1. Content of Comparative Analyses—26 CFR 54.9812–2(c), 29 CFR 2590.712–1(c), and 45 CFR 146.137(c)

The Departments propose requirements at 26 CFR 54.9812–2(c), 29 CFR 2590.712–1(c), and 45 CFR 146.137(c) governing the content of the comparative analyses required by Code section 9812(a)(8), ERISA section 712(a)(8), and PHS Act section 2726(a)(8). The proposed content requirements for comparative analyses as set forth in these proposed regulations are based on the stepwise process found in the 2020 MHPAEA Self-Compliance Tool, described earlier in this preamble, and by the express requirements of the governing statutory provisions.

Consistent with Code section 9812(a)(8), ERISA section 712(a)(8), and PHS Act section 2726(a)(8) these proposed rules would require that a comparative analysis include, at a minimum, with respect to each NQTL imposed under a plan or coverage option on mental health or substance use disorder benefits, six specific elements:

(1) a description of the NQTL;

(2) the identification and definition of the factors used to design or apply the NQTL;

(3) a description of how factors are used in the design or application of the NQTL;

(4) a demonstration of comparability and stringency, as written;

(5) a demonstration of comparability and stringency in operation; and

(6) findings and conclusions.

Additionally, these proposed rules would require each plan or issuer to prepare and make available to the Departments or applicable State authority, upon request, a written list of all NQTLs imposed under the plan or coverage and a general description of any information considered or relied upon by the plan or issuer in preparing the comparative analysis for each NQTL. This requirement is consistent with FAQs Part 45, which in addition to highlighting four NQTLs that would be enforcement priorities in the near term,[157] stated that plans and issuers should be prepared to make available a list of all other NQTLs for which they have prepared a comparative analysis and a general description of any documentation considered or relied upon to prepare each analysis.[158] The Departments propose to include a requirement to make such a list available to the Departments in connection with a request for a comparative analysis and to clarify that this requirement applies with respect to comparative analyses prepared for all NQTLs, not just those for which the Departments or an applicable State authority have requested a comparative analysis or other information at any particular time. For plans subject to ERISA, these proposed rules would also require that the plan or issuer provide this list and general description to the named fiduciaries required to review the findings or conclusions of each comparative analysis, as discussed later in this preamble.

For each comparative analysis, the description of the NQTL required under proposed 26 CFR 54.9812–2(c)(1), 29 CFR 2590.712–1(c)(1), and 45 CFR 146.137(c)(1) would be required to identify the NQTL that is the subject of the comparative analysis, including the specific terms of the plan or coverage or other relevant terms regarding the NQTL, the policies or guidelines (internal or external) in which the NQTL appears or is described, and the applicable sections of any other relevant documents, such as provider contracts that describe the NQTL, consistent with Code section 9812(a)(8)(A)(i), ERISA section 712(a)(8)(A)(i), and PHS Act section 2726(a)(8)(A)(i). This would include the documents that contain the specific language of the NQTL that the plan or issuer imposes.

The plan or issuer also would be required to identify all mental health or substance use disorder benefits and medical/surgical benefits to which the NQTL applies, including a list of which benefits are considered to be mental health and substance use disorder benefits and which benefits are considered to be medical/surgical benefits (consistent with the proposed definitions of those terms). Additionally, each plan or issuer would be required to include in its comparative analysis a description of which benefits are included in each classification of benefits set forth in 26 CFR 54.9812–1(c)(2)(ii)(A), 29 CFR 2590.712(c)(2)(ii)(A), and 45 CFR 146.136(c)(2)(ii)(A). Finally, the plan or issuer would be required to identify the predominant NQTL applicable to substantially all medical/surgical benefits in each classification, including an explanation of how the plan or issuer determined which variation is the predominant NQTL as compared to other variations, as well as how the plan identified the variations of the NQTL. This requirement is consistent with the statutory language that requires a

[155] As noted earlier in this preamble, HHS enforces applicable provisions of Title XXVII of the PHS Act, including the provisions added by MHPAEA, with respect to health insurance issuers offering group and individual health insurance coverage in States that elect not to enforce or fail to substantially enforce MHPAEA or another PHS Act provision.

[156] The 2022 MHPAEA Report to Congress notes that EBSA has used the process outlined in section 203 of the CAA, 2021 as a method to engage with service providers (such as TPAs and MBHOs) to obtain wider-scope corrections affecting many plans at once, including pursuing cases against issuers in their capacity as administrative services-only providers (ASOs) to self-insured plans covered by ERISA.

[157] *See* FAQs Part 45, Q8 (listing prior authorization requirements for in-network and out-of-network inpatient services; concurrent review for in-network and out-of-network inpatient and outpatient services; standards for provider admission to participate in a network, including reimbursement rates; and out-of-network reimbursement rates (plan methods for determining usual, customary, and reasonable charges). Additionally, in the 2023 MHPAEA Report to Congress, EBSA added two areas of priority for the applicable Reporting Period based on CAA, 2021 implementation experience during the first reporting period: impermissible exclusions of key treatments for mental health conditions and substance use disorders and adequacy standards for mental health and substance use disorder provider networks.

[158] FAQs Part 45, Q8.

description of the medical/surgical benefits subject to the NQTL and would operate in support of the proposed no more restrictive requirement at 26 CFR 54.9812–1(c)(4)(i), 29 CFR 2590.712(c)(4)(i), and 45 CFR 146.136(c)(4)(i), discussed earlier in this preamble.

The second proposed content element of the comparative analysis, under proposed 26 CFR 54.9812–2(c)(2), 29 CFR 2590.712–1(c)(2), and 45 CFR 146.137(c)(2), would be that a plan or issuer would be required to identify and define all of the factors considered or relied upon to design or apply the NQTL. The plan or issuer would be required to identify all of the factors considered, as well as the evidentiary standards considered or relied upon to design or apply each factor and the evidence or sources from which each evidentiary standard was derived, in determining which mental health or substance use disorder benefits and which medical/surgical benefits are subject to the NQTL.

The plan or issuer would then be required to define each factor. The definition of each factor would be required to include a detailed description of the factor, and a description of each evidentiary standard (and the source of each evidentiary standard) identified. The Departments stress that when identifying the evidence or sources from which an evidentiary standard is derived, the plan or issuer should be prepared to provide the copies of the actual evidence or source used, as well as the date and relevant citation for the correct version of the document used.

The third proposed content element of the comparative analysis, under 26 CFR 54.9812–2(c)(3), 29 CFR 2590.712–1(c)(3), and 45 CFR 146.137(c)(3) of these proposed rules, would be a description of how each factor is used in the design or application of the NQTL to mental health and substance use disorder benefits and medical/surgical benefits in a classification. This section of the comparative analysis would be required to include a detailed explanation of how each factor identified and defined in the comparative analysis is used to determine which mental health or substance use disorder benefits and which medical/surgical benefits are subject to the NQTL. The description would also include an explanation of the evidentiary standards or other information or sources (if any) considered or relied upon in designing or applying the factors or relied upon in designing and applying the NQTL, including in the determination of whether and how mental health or substance use disorder benefits or medical/surgical benefits are subject to the NQTL. In instances in which the application of the factor depends on specific decisions made in the administration of benefits, the comparative analysis would be required to provide information on the nature and timing of the decisions, and the professional designations and qualifications of each decision maker. For example, for a prior authorization NQTL that uses quality measures as a factor, the plan or issuer would be required to describe the nature of the decisions reviewers make to apply the factor (and the timing of those decisions) and describe the reviewers' professional designations and qualifications (including, for example, whether they are psychiatrists or psychologists) when using the factor to apply the NQTL to mental health benefits.

These proposed rules would further provide that, to the extent that more than one factor is identified and defined with respect to an NQTL, the comparative analysis would be required to explain how such factors relate to each other; the order in which all the factors are applied, including when they are applied; whether and how any factors are given more weight than others; and the reasons for the ordering or weighting of the factors. The analysis would also be required to address any deviation(s) or variation(s) from a factor, its applicability, or its definition (including the evidentiary standards used to define the factor and the information or sources from which each evidentiary standard was derived), such as how the factor is used differently to apply the NQTL to mental health and substance use disorder benefits as compared to medical/surgical benefits, and a description of how the plan or issuer establishes such deviations or variations. For purposes of these proposed rules, the terms ''deviations'' or ''variations'' in this context refer to any differences in how a factor is applied with respect to an NQTL. For example, if the NQTL that is the subject of a comparative analysis is the calculation of reimbursement rates for out-of-network providers, and the factors used to determine how the NQTL applies to mental health and substance use disorder providers are the geographic location of the providers and licensing and accreditation of providers, the comparative analysis would be required to explain in detail how each factor is used to determine the out-of-network reimbursement rates for both mental health and substance use disorder providers and medical/surgical providers, describe how the two factors relate to each other, and address how the plan or issuer establishes any deviations or variations from these factors.

Under the fourth and fifth proposed content elements of a comparative analysis, these proposed rules would require plans and issuers to demonstrate that, in any classification, under the terms of the plan (or health insurance coverage), *both as written* (under the fourth content element) *and in operation* (under the fifth content element), any processes, strategies, evidentiary standards, or other factors used in designing and applying the NQTL to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, those used in designing and applying the NQTL with respect to medical/surgical benefits. These content elements are consistent with the statutory requirement that comparative analyses demonstrate ''that the processes, strategies, evidentiary standards, and other factors used to apply the NQTLs to mental health or substance use disorder benefits, as written and in operation, are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, and other factors used to apply the NQTLs to medical/surgical benefits in the benefits classification,'' [159] as well as the provisions of the 2013 final regulations and these proposed rules that would require plans and issuers to analyze parity with respect to NQTLs as written and in operation (recognizing that a plan or issuer may have written processes or plan or coverage terms that are compliant as written, but might not be compliant in practice).[160]

For example, a plan or issuer might use a factor that allows discretion in applying an NQTL that is not captured in detail in written plan or coverage terms or procedures (such as whether an individual may be safely and effectively transitioned to a lower level of care), which might not be comparable in practice when processing claims for mental health and substance use disorder benefits as compared to when processing claims for medical/surgical benefits. Additionally, a plan or issuer might have written processes that are comparable for an NQTL applicable to

[159] Code section 9812(a)(8)(A)(iv), ERISA section 712(a)(8)(A)(iv), and PHS Act section 2726(a)(8)(A)(iv).

[160] 26 CFR 54.9812(c)(4)(i), 29 CFR 2590.712(c)(4)(i), and 45 CFR 146.136(c)(4)(i).

mental health and substance use disorder benefits and medical/surgical benefits, but that are applied in a more stringent manner to mental health and substance use disorder benefits than to medical/surgical benefits in operation. Thus, it is essential that the Departments are able to determine that, as written and in operation, any processes, strategies, evidentiary standards, or other factors used in designing and applying the NQTL to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, those used in designing and applying the NQTL to medical/surgical benefits.

To demonstrate comparability and stringency as written under the fourth content element in proposed 26 CFR 54.9812–2(c)(4), 29 CFR 2590.712–1(c)(4), and 45 CFR 146.137(c)(4), plans and issuers would be required to include in their comparative analysis, with respect to the NQTL and the factors used in applying the NQTL, documentation of each factor identified and defined in the comparative analysis that was applied to determine whether the NQTL applies to mental health or substance use disorder benefits and medical/surgical benefits in a classification. This would include, as relevant, quantitative data, calculations, or other analyses showing whether, in each classification in which the NQTL applies, mental health or substance use disorder benefits and medical/surgical benefits met or did not meet any applicable threshold identified in the relevant evidentiary standard, and the evaluation of relevant data as required under 26 CFR 54.9812–1(c)(4)(iv)(A), 29 CFR 2590.712(c)(4)(iv)(A), and 45 CFR 146.136(c)(4)(iv)(A) of these proposed rules, to determine that the NQTL would or would not apply. In addition, such documentation would include records maintained by the plan or issuer documenting the consideration and application of all factors and evidentiary standards, as well as the results of their application. Such records could include meeting minutes, or calculations related to quantitative factors, such as costs.

Plans and issuers would also be required to include in their comparative analysis, in each classification in which the NQTL applies, a comparison of how the NQTL, as written, is designed and applied to mental health or substance use disorder benefits and to medical/surgical benefits, including the specific provisions of any forms, checklists, procedure manuals, or other documentation used in designing and applying the NQTL or that address the application of the NQTL. Additionally, the plan or issuer would be required to include in its comparative analysis documentation demonstrating how the factors are comparably applied, as written, to mental health or substance use disorder benefits and medical/surgical benefits in each classification, to determine which benefits are subject to the NQTL. To the extent there is any deviation(s) or variation(s) in the application of a factor, the plan or issuer would be required to include in their comparative analysis an explanation of the reason(s) for any deviation(s) or variation(s) in the application of a factor used to apply the NQTL, or the application of the NQTL, to mental health or substance use disorder benefits as compared to medical/surgical benefits, and how the plan or issuer establishes such deviation(s) or variation(s), including in the definition of the factors, the evidentiary standards used to define the factors, and the sources from which the evidentiary standards were derived; in the design of the factors or evidentiary standards; or in the application or design of the NQTL. As noted earlier in this preamble, the terms ''deviations'' or ''variations'' refer to any differences in how a factor is applied.

In the fifth proposed content element of a comparative analysis, to demonstrate comparability and stringency in operation, proposed 26 CFR 54.9812–2(c)(5), 29 CFR 2590.712–1(c)(5), and 45 CFR 146.137(c)(5) would require a plan or issuer to include in its comparative analysis, with respect to the NQTL and the factors used in designing and applying the NQTL, a comprehensive explanation of how the plan or issuer ensures that, in operation, the processes, strategies, evidentiary standards, or other factors used in designing and applying the NQTL to mental health or substance use disorder benefits in a classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in designing and applying the NQTL with respect to medical/surgical benefits. This comprehensive explanation would be required to include an explanation of any methodology and underlying data used to demonstrate the application of the NQTL in operation, and the sample period, inputs used in any calculations, definitions of terms used, and any criteria used to select the mental health or substance use disorder benefits and medical/surgical benefits to which the NQTL is applicable.

Requiring data to be provided to demonstrate compliance with MHPAEA is not a new concept. To facilitate the compliance review of NQTLs, many States have adopted reporting requirements capturing specific data that reflect how the application of certain NQTLs affect outcomes.[161] Examples of data required to be included in reporting by States includes rates of utilization review (including approvals and denials), rates of appeal for adverse benefit determinations (upheld and overturned), the numbers or rates of prior or concurrent authorization requests and denials, percentages of claims for mental health and substance use disorder benefits and medical/surgical benefits that are in-network, and provider reimbursement rates.[162] Additionally, a number of States have established quantitative standards for assessing network adequacy, based on maximum travel time or distance, provider-to-enrollee ratios, and maximum appointment wait times.[163] HHS established similar quantitative standards for assessing network adequacy for QHPs offered through the Federally-facilitated Exchanges starting with benefit year 2023.[164] The proposed requirement that plans and issuers include such data, and their evaluation of such data, as part of a comparative analysis would support the Departments' efforts to ensure compliance with MHPAEA, with a focus on access to mental health and substance use disorder care, by helping to identify instances of operational noncompliance with the requirements of MHPAEA and its implementing regulations.

Therefore, as part of a comparative analysis, under these proposed rules, plans and issuers would be required to include the relevant data required under proposed 26 CFR 54.9812–1(c)(4)(iv)(A), 29 CFR 2590.712(c)(4)(iv)(A), and 45 146.136(c)(4)(iv)(A) and evaluate the outcomes that resulted from the application of the NQTL to mental health or substance disorder benefits and medical/surgical benefits, including an evaluation of such relevant data in their comparative analysis, in order to demonstrate whether, in operation, any processes, strategies, evidentiary

[161] *See* State Parity Implementation Survey, available at *https://www.paritytrack.org/reports/#state-disparities.*

[162] *See, e.g.,* N.Y. Ins. Law 343(b); DC Code Sec. 31–3175.03; and Tex. Ins. Code Sec. 1355.254 (coverage for mental health conditions and substance use disorders).

[163] For examples of these State-imposed quantitative standards for assessing network adequacy, see *https://www.ncsl.org/health/health-insurance-network-adequacy-requirements.*

[164] 87 FR 27208 (May 6, 2022); 2023 Final Letter to Issuers in the Federally-facilitated Exchanges, available at *https://www.cms.gov/sites/default/files/2022-04/Final-2023-Letter-to-Issuers_0.pdf.*

standards, or other factors used in applying the NQTL to mental health or substance use disorder benefits in a classification are comparable to, and are applied no more stringently than those used in applying the limitation with respect to medical/surgical benefits in the classification. The collection and evaluation of this data would assist plans, issuers, participants, beneficiaries, and the Departments (or applicable State authority) in identifying an NQTL that might not comply with MHPAEA.

As part of this evaluation, the comparative analysis would be required to include a detailed explanation of material differences in outcomes that are not attributable to differences in the comparability or relative stringency of the NQTL as applied to mental health or substance use disorder benefits and medical/surgical benefits, as well as the basis for concluding that material differences in outcomes are not attributable to differences in the comparability or relative stringency of the NQTL. The requirement that plans and issuers include the relevant data, and their evaluation and analysis of such data, in their comparative analysis is consistent with the CAA, 2021's amendments to MHPAEA, which require plans and issuers to demonstrate that, in operation, the processes, strategies, evidentiary standards, and other factors used in applying the NQTL to mental health or substance use disorder benefits are comparable to, and are applied no more stringently than, those used to apply the NQTL to medical/surgical benefits.[165] Similarly, to be compliant with this proposed requirement, plans and issuers must adequately demonstrate that any material differences in outcomes are not due to the processes, strategies, evidentiary standards, and other factors being applied more stringently to mental health or substance use disorder benefits, and that they are designed and applied comparably.

The Departments note that their authority to require data is not limited to the data required by 26 CFR 54.9812–2(c)(5), 29 CFR 2590.712–1(c)(5), and 45 CFR 146.137(c)(5). The proposed requirement to evaluate a comparative analysis for operational compliance with MHPAEA's requirements would permit the Departments to require the plan or issuer to provide, as part of that process, additional data to analyze assertions made in the comparative analysis. For example, the Departments may make such a request in instances in which the Departments conclude that a plan or issuer has not submitted to the Departments sufficient information to assess compliance with MHPAEA as part of its comparative analysis, as described later in this preamble. Plans and issuers performing and documenting the required comparative analysis of an NQTL must also provide any and all relevant information used to design or apply the NQTL, as explained earlier in this preamble. Finally, the Departments may also require additional information under their authority to investigate plans and issuers.[166]

The comparative analysis would be required to include a discussion of any measures that have been or are being implemented by the plan or issuer to mitigate any materially disparate outcomes with respect to mental health or substance use disorder benefits and medical/surgical benefits, including the actions the plan or issuer is taking under these proposed rules to address the material differences in access to mental health or substance use disorder benefits as compared to medical/surgical benefits, including the actions required by 26 CFR 54.9812–1(c)(4)(iv)(B)(*1*), 29 CFR 2590.712(c)(4)(iv)(B)(*1*), and 45 CFR 146.136(c)(4)(iv)(B)(*1*). As discussed earlier in this preamble and in previous guidance related to MHPAEA, evaluating quantitative outcomes helps to identify areas of potential noncompliance. Therefore, these proposed rules would require that as part of a sufficient comparative analysis, a plan or issuer must carefully assess any outcomes that resulted from the application of an NQTL, explain material differences in those outcomes, and disclose any measures to mitigate those disparate outcomes.

The sixth proposed content element of a comparative analysis under proposed 26 CFR 54.9812–2(c)(6), 29 CFR 2590.712–1(c)(6), and 45 CFR 146.137(c)(6) (and consistent with Code section 9812(a)(8)(A)(v), ERISA section 712(a)(8)(A)(v), and PHS Act section 2726(a)(8)(A)(v)), would require that a comparative analysis address findings and conclusions as to the comparability of the processes, strategies, evidentiary standards, and other factors used in designing and applying the NQTL to mental health or substance use disorder benefits and medical/surgical benefits within each classification, and the relative stringency of their application, both as written and in operation. The comparative analysis would be required to include any findings or conclusions indicating that the plan or coverage is not (or might not be) in compliance with the provisions of these proposed rules for NQTLs, including any actions the plan or issuer has taken or intends to take to address any potential areas of concern or noncompliance. The comparative analysis would be required to include a reasoned and detailed discussion of those findings and conclusions, as well as citations to any additional specific information not otherwise included in the comparative analysis that supports the findings and conclusions.

Additionally, these proposed rules would require that the comparative analysis include the date of the analysis and the title and credentials of all relevant persons who participated in the performance and documentation of the comparative analysis. If the comparative analysis relies upon an evaluation by a reviewer or consultant considered by the plan or issuer to be an expert, the comparative analysis would be required to include an assessment of each expert's qualifications and the extent to which the plan or issuer ultimately relied upon each expert's evaluation in performing and documenting the comparative analysis of the design and application of each NQTL applicable to both mental health or substance use disorder benefits and medical/surgical benefits.

Finally, for plans subject to ERISA, the comparative analysis would be required to include a certification by one or more named fiduciaries who have reviewed the analysis, stating whether they found the comparative analysis to be in compliance with the content requirements of these proposed rules. This requirement, along with the requirement that the plan provide named fiduciaries with a written list of all NQTLs and a general description of any existing documentation relied on by the plan or issuer in preparing the comparative analysis for each NQTL, would help ensure that plan fiduciaries meet their obligations under ERISA to review the comparative analyses and properly monitor their plans for compliance with MHPAEA.

The Departments emphasize that the proposed requirement to include this information on the factors, evidentiary standards, and sources used to design or apply the NQTL is crucial to understanding whether the NQTL complies with MHPAEA's requirements. Plans and issuers must disclose information as required by MHPAEA to participants and beneficiaries, as well as the Departments, regardless of whether such information is ''proprietary'' and/

[165] Code section 9812(a)(8)(A)(iv), ERISA section 712(a)(8)(A)(iv), and PHS Act section 2726(a)(8)(A)(iv).

[166] *See, e.g.,* ERISA section 504.

or has ''commercial value.'' [167] Similarly, if finalized, plans and issuers must include all information required in the comparative analyses.

The Departments solicit comments on all aspects of the proposed content elements for NQTL comparative analyses, including whether there are additional considerations, such as the Kennedy Forum's Six-Step Parity Compliance Guide,[168] or comparable State processes, that the Departments should incorporate into these proposed rules. The Departments also solicit comments on whether any of these proposed requirements related to the content of comparative analyses are superfluous, unhelpful, or unreasonably burdensome.

2. Requirement To Provide Comparative Analyses and Notices to the Departments and Other Individuals and Entities—26 CFR 54.9812–2(d) and (e), 29 CFR 2590.712–1(d) and (e), and 45 CFR 146.137(d) and (e)

As specified in Code section 9812(a)(8), ERISA section 712(a)(8), and PHS Act section 2726(a)(8) and FAQs Part 45, effective February 10, 2021, plans and issuers must be prepared to make their comparative analyses available to the Departments or applicable State authorities upon request. These proposed rules set forth proposed requirements related to submission of comparative analyses to the Departments or applicable State authorities once a request has been received by a plan or issuer. However, as discussed later in this section of the preamble, the requirement to perform and document comparative analyses of the design and application of NQTLs is not dependent upon a request by the Secretary or an applicable State authority, and plans and issuers should not wait for a request from the Secretary or applicable State authority to perform and document their comparative analyses.

These proposed rules would require that plans and issuers make a comparative analysis required under 26 CFR 54.9812–2(b), 29 CFR 2590.712–1(b), and 42 CFR 147.137(b) available and submit it upon request by the relevant Secretary. Once a comparative analysis is requested, these proposed rules would require plans and issuers to provide a comparative analysis within 10 business days of receipt of a request from the relevant Secretary (or an additional period of time specified by the relevant Secretary). This proposed deadline is consistent with the Departments' current enforcement practices for requesting comparative analyses from plans and issuers and would allow each Secretary to permit extensions of this deadline as warranted on a case-by-case basis.

After a plan or issuer responds to an initial request for a comparative analysis, if the relevant Department (with jurisdiction over the group health plan (or health insurance coverage offered by an issuer in connection with such a plan)) concludes a plan or issuer has not submitted sufficient information for it to review the requested comparative analyses, Code section 9812(a)(8)(B)(ii), ERISA section 712(a)(8)(B)(ii), and PHS Act section 2726(a)(8)(B)(ii) provide that the Departments shall specify to the plan or issuer the additional information the plan or issuer must submit to be responsive to the request. Under these proposed rules, the plan or issuer would be required to furnish this additional information to the relevant Secretary within 10 business days after the relevant Secretary specifies the additional information to be submitted (or an additional period of time specified by the relevant Secretary). As noted earlier in this preamble, a request for additional information by the relevant Department or an applicable State authority may include a request for data to analyze the assertions made in the comparative analyses, consistent with existing authority. This additional information or data may relate to the relevant data specified by the Departments to be included in a comparative analysis (discussed earlier in this preamble) or other data.

In instances that the relevant Department has reviewed a plan's or issuer's comparative analyses (and any additional information submitted upon request), and made an initial determination that the plan or issuer is not in compliance with the requirements related to NQTLs, Code section 9812(a)(8)(B)(iii)(I)(aa), ERISA section 712(a)(8)(B)(iii)(I)(aa), and PHS Act section 2726(a)(8)(B)(iii)(I)(aa) require the plan or issuer to respond to the Departments and specify the actions the plan or issuer will take to bring the plan or coverage into compliance (a corrective action plan) and provide additional comparative analyses that demonstrate compliance not later than 45 calendar days after the initial determination of noncompliance. Consistent with these statutory provisions, these proposed rules would also require the plan or issuer to respond to the relevant Department and specify the actions the plan or issuer will take to bring the plan or coverage into compliance, and provide to the relevant Department additional comparative analyses meeting the requirements of these proposed rules that demonstrate compliance with MHPAEA not later than 45 calendar days after the relevant Department's initial determination that the plan or issuer is not in compliance.

If the relevant Department makes a final determination that the plan or issuer is not in compliance following the 45-calendar-day corrective action period, these proposed rules would provide at 26 CFR 54.9812–2(d)(4), 29 CFR 2590.712–1(d)(4), and 45 CFR 146.137(d)(4) that, within 7 calendar days of the receipt of the final determination of noncompliance, the plan or issuer must provide a standalone notice that is not combined with any other notices or disclosures, as required under applicable Federal or State law, to all participants and beneficiaries enrolled in the plan or coverage that the plan or issuer has been determined to not be in compliance with the requirements of these proposed rules, consistent with Code section 9812(a)(8)(B)(iii)(I)(bb), ERISA section 712(a)(8)(B)(iii)(I)(bb), and PHS Act section 2726(a)(8)(B)(iii)(I)(bb). The plan or issuer would also be required to provide a copy of the notice to the Secretary, any service provider involved in the claims process, and any fiduciary responsible for deciding benefit claims within the same time frame. The Departments solicit comments on the proposed timing of this notice, including whether requiring the notice to be provided within 7 calendar days of receipt of a final determination of noncompliance would provide sufficient time for plans and issuers to provide notice, or whether allowing the notice to be provided within 7 business days would be more practicable given holidays and weekends that could serve to effectively shorten the 7-calendar-day timeframe.

The notice to participants and beneficiaries (which would include a participant's or beneficiary's authorized representative) informing them that the relevant Department has determined that their plan or coverage violates MHPAEA gives them critically important information for the pursuit and protection of their own benefit claims and rights and provides a powerful incentive for the plan or issuer to take necessary corrective actions to come into compliance following an initial determination of noncompliance.

[167] *See* FAQs Part XXIX, Q12.

[168] The ''Six-Step'' Parity Compliance Guide for Non-Quantitative Treatment Limitation (NQTL) Requirements, available at *https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/faq-38/00018.pdf.*

These proposed rules set forth requirements for the content of this notice and the manner in which it would be required to be provided. These proposed rules would require that the notice be written in plain language and in a manner calculated to be understood by the average plan participant or beneficiary. This concept is consistent with the Departments' transparency in coverage regulations,[169] and the DOL's style and format requirements for summary plan descriptions under ERISA.[170] The notice would be required to include the following statement prominently displayed on the first page, in no less than 14-point font:

''Attention! The [Department of Labor/Department of Health and Human Services/Department of the Treasury] has determined that [insert the name of group health plan or health insurance issuer] is not in compliance with the Mental Health Parity and Addiction Equity Act.''

The notice would also be required to contain a summary of any changes the plan or issuer has made as part of its corrective action plan specified to the Secretary following the initial determination of noncompliance, including an explanation of any opportunity for a participant or beneficiary to have a claim for benefits reprocessed. Additionally, the notice would be required to include a summary of the Secretary's final determination that the plan or issuer is not in compliance with MHPAEA, including any provisions or practices identified to be in violation of MHPAEA, any additional corrective actions identified by the Secretary in the final determination notice, and information on how participants and beneficiaries can obtain a copy of the final determination of noncompliance from the plan or issuer. This notice would also be required to include any other actions the plan or issuer is taking to come into compliance with MHPAEA, information on when the plan or issuer will take (or has taken) such actions, and a clear and accurate statement explaining whether the Secretary has indicated that those actions, if completed, will result in compliance. Finally, these proposed rules would require the notice include contact information for questions and complaints, with a statement explaining how participants and beneficiaries can obtain more information about the notice, including a phone number and an email or web portal address for the plan or issuer, and contact information for the relevant Department.

Under these proposed rules, a plan or issuer would be required to make the notice available in paper form. The plan or issuer may also make the notice available electronically (such as by email or an internet posting) if the format is readily accessible, the notice is provided in paper form free of charge upon request, and, in a case in which the electronic form is an internet posting, the plan or issuer timely notifies the participant or beneficiary in paper form (such as a postcard) or email that the documents are available on the internet, provides the internet address, and notifies the participant or beneficiary that the documents are available in paper form upon request. This approach is similar to standards for when a plan or issuer is permitted to provide a copy of their plan's or coverage's summary of benefits and coverage with respect to participants and beneficiaries who are eligible but not enrolled for coverage.[171] For ERISA plans, the plan or issuer would also be required to ensure that the notice is provided to any service provider involved in the claims process, and any fiduciary responsible for deciding benefit claims within 7 calendar days of receipt of the final determination of noncompliance, so that the service provider or fiduciary can appropriately take the violation into account in deciding claims in compliance with the requirements of 29 CFR 2590.712(c)(4) and in accordance with section 404(a)(1)(D) of ERISA.

In addition to making the comparative analyses available upon request to the relevant Secretary, 26 CFR 54.9812–2(e), 29 CFR 2590.712–1(e), and 45 CFR 146.137(e) of these proposed rules would require that plans and issuers make available the comparative analyses required by 26 CFR 54.9812–2, 29 CFR 2590.712–1, and 45 CFR 146.137 when requested by any applicable State authority. While these proposed rules would codify the statutory requirement to make comparative analyses available to the applicable State authority upon request, these proposed rules do not otherwise apply the timeframes and processes regarding the Secretarial request process to requests made by applicable State authorities. The Departments seek comment on whether, in cases in which an applicable State authority makes a request for an NQTL comparative analysis, the proposed requirements in paragraph (d) related to submission of comparative analyses to the Secretary, including the proposed notice requirement in paragraph (d)(4), should apply to plans and issuers with respect to a request made by the applicable State authority. In cases of an adverse benefit determination, non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage would be required to make these comparative analyses available to participants or beneficiaries, and providers or other individuals acting as their authorized representative, upon request and in accordance with the requirements under section 2719 of the PHS Act and its implementing regulations.[172] Finally, the Departments solicit comment on other measures to increase transparency and better inform the general public regarding final agency determinations of noncompliance of plans or issuers with MHPAEA.

Additionally, under these proposed rules, plans subject to ERISA would be required to make these comparative analyses available to participants and beneficiaries upon request, consistent with the interpretation discussed earlier in this preamble that comparative analyses and any other applicable information required under the CAA, 2021 and these proposed rules are instruments under which a plan is established or operated. If a provider or other person is acting as a participant's or, beneficiary's, authorized representative, plans subject to ERISA would be required to make this analysis available to the provider or other authorized representative.

The Departments have received questions about when plans and issuers are required to perform and document comparative analyses, and how often they must be updated. The Departments are aware of reports that some plans (or their TPAs or other service providers) and issuers have not documented their comparative analyses and instead wait until the Departments, or an applicable State authority, request comparative analyses, or indicate that the plan or issuer is otherwise under investigation. The Departments are also aware of reports that self-insured plans have been unsuccessful in receiving comparative analyses (or the information required to perform and document comparative analyses) from their TPAs or other service providers in response to a request. The Departments emphasize that the requirement to perform and

[169] 26 CFR 54.9815–2715A1(a)(2)(xx), 29 CFR 2590.715–2715A1(a)(2)(xix), 45 CFR 147.210(a)(2)(xx).

[170] 29 CFR 2520.102–2(a).

[171] *See* 26 CFR 54.9815–2715(a)(4)(ii)(B), 29 CFR 2590.715–2715(a)(4)(ii)(B), 45 CFR 147.200(a)(4)(ii)(B).

[172] 26 CFR 54.9815–2719, 29 CFR 2590.715–2719, and 45 CFR 147.136.

document comparative analyses of the design and application of NQTLs has been effective under the CAA, 2021 for more than two years (since February 10, 2021) and is an independent statutory obligation that is not dependent upon a request by the Secretary or an applicable State authority. It is an affirmative statutory obligation that applies irrespective of any such request.

The requirements under Code section 9812(a)(8), ERISA section 712(a)(8), and PHS Act section 2726(a)(8) and these proposed rules to perform and document comparative analyses of the design and application of NQTLs are essential components of a plan's or issuer's legal obligation to ensure compliance with MHPAEA, and failure to satisfy those requirements puts participants and beneficiaries at risk of their mental health and substance use disorder benefits not being in parity with medical/surgical benefits. Therefore, plans and issuers should work with their service providers to ensure that they have performed and documented comparative analyses for their NQTLs as required by MHPAEA, as amended by the CAA, 2021, regardless of the timing of any request by the Departments, applicable State authorities, or participants and beneficiaries. Plans and issuers and their service providers must also ensure that the comparative analyses reflect the current terms of the plan or coverage, which may require them to update their comparative analyses, or perform and document new comparative analyses when there is a change in plan benefit design, administration or utilization that is not reflected in the current version of the comparative analyses.

Finally, nothing in these proposed rules, should be construed to prevent the relevant Secretary from acting within the scope of existing authorities to address violations of MHPAEA.

C. Applicability—26 CFR 54.9812–1(i), 29 CFR 2590.712(i), and 45 CFR 146.136(i) and 26 CFR 54.9812–2(g), 29 CFR 2590.712–1(g), and 45 CFR 146.137(g)

While the Departments are of the view that the provisions included in these proposed rules, if finalized, are critical to helping to ensure access to vital mental health and substance use disorder benefits, the Departments also recognize that new requirements may take time for plans and issuers to implement. In order to strike an appropriate balance, the Departments propose to amend 26 CFR 54.9812–1(i)(1), 29 CFR 2590.712(i)(1), and 45 CFR 146.136(i)(1) to specify that except as provided in paragraph (i)(2) of the 2013 final regulations, these proposed rules, if finalized, would apply on the first day of the first plan year beginning on or after January 1, 2025.[173] Until the applicability date, plans and issuers would be required to continue to comply with 26 CFR 54.9812–1, revised as of April 1, 2023, 29 CFR 2590.712, revised as of July 1, 2022, and 45 CFR 146.136, revised as of October 1, 2021, as applicable.

For similar reasons, the Departments also propose that the requirements in 26 CFR 54.9812–2, 29 CFR 2590.712–1, and 45 CFR 146.137 of these proposed rules would become effective for plan years beginning on or after January 1, 2025. However, the Departments remind plans and issuers [174] that the statutory provisions added to MHPAEA by the CAA, 2021 are self-implementing and took effect on February 10, 2021. Therefore, the proposed delayed applicability date for these proposed rules does not alter a plan's or issuer's obligations under the statute. As such, plans and issuers must continue performing and documenting comparative analyses of the design and application of NQTLs in accordance with the statutory requirements and make them available to the Departments or applicable State authorities before the applicability date of these proposed rules, if finalized. The Departments request comments on the proposed applicability date.

D. Severability—26 CFR 54.9812–1(j), 29 CFR 2590.712(j), and 45 CFR 146.136(j) and 26 CFR 54.9812–2(h), 29 CFR 2590.712–1(h), and 45 CFR 146.137(h)

The Departments propose to include severability clauses in these proposed rules to capture the Departments' intent that, to the extent a reviewing court holds that any provision of these proposed rules, if finalized, is unlawful by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision would be construed so as to continue to be given the maximum effect permitted by law. The Departments are of the view that this rulemaking, if finalized as proposed or as a substantially similar version, would provide comprehensive protections that implement MHPAEA's requirements. Overall, the aim of these proposed rules is to ensure that individuals with mental health conditions and substance use disorders benefit from the full protections afforded to them under MHPAEA, and that separate elements of this proposal would individually contribute to furthering that aim. The proposed requirements under 26 CFR 54.9812–1(c)(4)(i) and (ii), 29 CFR 2590.712(c)(4)(i) and (ii), and 45 CFR 146.136(c)(4)(i) and (ii), for instance, while part of a comprehensive regulatory scheme, are separate aspects of the parity analysis. Similarly, the rule requires plans and issuers to collect and evaluate outcomes data in a manner reasonably designed to assess the impact of the NQTL and consider the impact as part of the plan's or issuer's analysis of whether the limitation, in operation, complies with the requirements under 26 CFR 54.9812–1(c)(4)(i) and (ii), 29 CFR 2590.712(c)(4)(i) and (ii), and 45 CFR 146.136(c)(4)(i) and (ii). However, the requirements of paragraphs (c)(4)(i) and (ii) are meant to stand independently of the requirement to use outcomes data in such a manner and can continue to apply independently if other provisions of this rule are invalidated. Finally, while the Departments are of the view that the unique considerations of the NQTLs related to network composition merit the special rule at 26 CFR 54.9812–1(c)(4)(iv)(C), 29 CFR 2590.712(c)(4)(iv)(C), and 45 CFR 146.136(c)(4)(iv)(C), the Departments believe that the other requirements of this proposed rule could continue to apply to NQTLs related to network composition, should this special rule be invalidated or stayed pending further action. Consequently, following a potential legal challenge, a court's decision to invalidate one standard does not affect any provision that relates to a separate standard. As indicated, these applications of severability to the provisions in these proposed rules is only an example and is not exhaustive of other potential applications. If a court were to hold that any provisions were invalid or unenforceable, these provisions in the proposed rules state that any affected provisions would be severable from the rest of these proposed rules, if finalized, and would not affect any other provisions or their application to persons not similarly situated or to dissimilar circumstances.

[173] *But see* 26 CFR 54.9812–1(e)(4), 29 CFR 2590.712(e)(4), and 45 CFR 146.136(e)(4), which explains how these requirements interact with the requirement to provide EHBs under 45 CFR 147.150 and 156.115.

[174] Consistent with the statute, under these proposed rules, the comparative analysis requirements under proposed 26 CFR 54.9812–2, 29 CFR 2590.712–1, and 45 CFR 146.137 would not apply to a plan or issuer that qualifies for the small employer exemption under 26 CFR 54.9812–1(f), 29 CFR 2590.712(f), and 45 CFR 146.136(f) or the increased cost exemption under 26 CFR 54.9812–1(g), 29 CFR 2590.712(g), and 45 CFR 146.136(g).

III. Overview of the Proposed Rules—Department of HHS

A. Sunset of MHPAEA Opt Out for Self-Funded Non-Federal Governmental Plans

As noted earlier in this preamble, sponsors of self-funded, non-Federal governmental plans are permitted to opt out of certain requirements categories of title XXVII of the PHS Act.[175] Prior to the enactment of the CAA, 2023, such plans could elect to opt out of compliance with the requirements under MHPAEA, among three other requirements categories of title XXVII of the PHS Act.

The CAA, 2023, enacted on December 29, 2022, included a provision that sunsets the election option with respect to MHPAEA.[176] Specifically, section 1321 of title I of Division FF of the CAA, 2023 amended PHS Act section 2722(a)(2) by adding language specifying that no MHPAEA opt-out election may be made on or after the date of the enactment of the CAA, 2023, and that generally, no MHPAEA opt-out election expiring on or after the date that is 180 days after the date of such enactment may be renewed. The CAA, 2023 included an exception for certain collectively bargained plans with an opt-out election in effect for MHPAEA that allows for a longer transition to come into compliance with MHPAEA. Specifically, the CAA, 2023 added language to PHS Act section 2722(a)(2) indicating that a plan that is subject to multiple collective bargaining agreements of varying lengths that has a MHPAEA opt-out election in effect as of the date of enactment of the CAA, 2023, that expires on or after the date that is 180 days after the enactment of the CAA, 2023, may extend such election until the date on which the term of the last such agreement expires.

As a result of the CAA, 2023 amendments to PHS Act section 2722(a)(2), self-funded, non-Federal governmental plan sponsors may elect to opt out of only the following three PHS Act requirements categories: standards relating to benefits for newborns and mothers (PHS Act section 2725), required coverage for reconstructive surgery following mastectomies (PHS Act section 2727), and coverage for dependent students on a medically necessary leave of absence (PHS Act section 2728).

In this rulemaking, HHS proposes to amend 45 CFR 146.180 to align with the CAA, 2023 amendments to PHS Act section 2722(a)(2). Specifically, HHS proposes to redesignate paragraphs (a)(3) through (7) as paragraphs (a)(4) through (8) and add a new paragraph (a)(3) specifying that a sponsor of a self-funded, non-Federal governmental plan may not elect to exempt its plan(s) from any of the MHPAEA requirements on or after December 29, 2022 (the date of enactment of the CAA, 2023) through the process specified in 45 CFR 146.180. HHS also proposes to add new paragraph (f)(4)(iii) that would specify that in the case of a self-funded, non-Federal governmental plan that is subject to multiple collective bargaining agreements of varying lengths and that has an election with respect to any of the MHPAEA requirements in effect as of December 29, 2022, through the process specified in 45 CFR 146.180, that expires on or after June 27, 2023 (the date that is 180 days after the date of enactment of the CAA, 2023), the plan may extend such election until the date on which the term of the last such agreement expires. HHS also proposes to make conforming edits to paragraphs (a)(2), (a)(5)(i) and (ii), and (a)(6)(ii), as proposed to be redesignated, and paragraph (f)(1). The proposed amendments to 45 CFR 146.180 would apply on the effective date of the final rule. HHS seeks comments on these proposed amendments to implement the sunset of the MHPAEA opt-out election and whether additional guidance or clarifications are necessary.

B. Applicability of MHPAEA to Individual Health Insurance Coverage

The HHS regulation implementing MHPAEA for individual health insurance coverage is codified at 45 CFR 147.160. The regulation currently provides that the group market regulation implementing MHPAEA at 45 CFR 146.136 applies to health insurance coverage offered by a health insurance issuer in the individual market in the same manner and to the same extent as such provisions apply to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the large group market, for policy years beginning on or after the applicability date set forth in 45 CFR 146.136(i). Therefore, through cross-reference, the proposed amendments to 45 CFR 146.136, if finalized, would apply in the same manner to health insurance issuers offering individual health insurance coverage. Further, HHS proposes to include a cross reference in 45 CFR 147.160 to the comparative analysis requirements proposed in 45 CFR 146.137 of these proposed rules. The cross reference would similarly make clear that the comparative analysis requirements apply to health insurance issuers offering individual health insurance coverage in the same manner that those provisions apply to group health plans and health insurance issuers offering coverage in connection with such plans.

These provisions would apply to health insurance issuers offering individual health insurance coverage for policy years beginning on or after January 1, 2026. In the individual market, non-grandfathered individual health insurance coverage must be offered on a calendar year basis. Premium rates must be submitted to the applicable regulator and finalized prior to January 1 of each calendar year and rates cannot be modified during the year. The proposed applicability date is intended to provide time for issuers offering individual health insurance coverage to account for the effects of these rules following publication of the final rules and prior to when rates and benefits must be finalized and approved for the following calendar year.

Finally, for greater clarity and precision and to align with the statutory terminology, HHS proposes to modify the regulation text to refer to ''individual health insurance coverage offered by a health insurance issuer'' as opposed to ''health insurance coverage offered in the individual market.''

IV. Request for Information on Ways To Improve Mental Health and Substance Use Disorder Benefits Through Other Consumer Protection Laws

The Departments are committed to using their full statutory authority to address the nation's mental health and substance use disorder crises. In supporting the Administration's response to these epidemics, the Departments are considering ways to improve the coverage of mental health and substance use disorder benefits through other consumer protection laws, including the Affordable Care Act. The Departments request comments from all interested parties with respect to the following specific areas:

1. Group health plan sponsors depend on administrative service providers, health insurance issuers, and other TPAs to design and manage their plans in a manner that complies with MHPAEA among other Federal consumer protections. However, plan sponsors are generally responsible for ensuring compliance and could, in certain circumstances, be liable for

[175] PHS Act section 2722(a)(2); 45 CFR 146.180.

[176] Division FF, Title I, Subtitle C, Chapter 3, sec. 1321, Public Law 117–328, 136 Stat. 4459 (Dec. 29, 2022).

penalties for any violations.[177] Are there ways that TPAs could be further incentivized to facilitate compliance with MHPAEA on behalf of the plans that they design and administer?

2. Section 108 of Title I of Division BB of the CAA, 2021 requires the Departments to issue a rule implementing the provider nondiscrimination provisions in PHS Act section 2706(a). In 2014, the Departments published a request for information on provider nondiscrimination, followed by FAQs on these requirements.[178] Following the enactment of the CAA, 2021, the Departments held a listening session on January 19, 2022 regarding implementation of the provider nondiscrimination provision, in order to foster an exchange of information and views and afford interested individuals and organizations an opportunity to share their perspective on what should be included in forthcoming proposed rules. As the Departments continue to work on proposed rules implementing the provider nondiscrimination provisions, are there ways that the Departments can enhance access to mental health and substance use disorder benefits through their implementation of PHS Act section 2706(a)?

3. Code section 9820(a) and (b), ERISA section 720(a) and (b), and PHS Act section 2799A–5(a) and (b), as added by section 116 of title I of Division BB of the CAA, 2021, establish standards related to provider directories. The Departments intend to undertake notice and comment rulemaking to implement the provider directory requirements. Are there ways that the Departments can improve the coverage of and enhance access to mental health and substance use disorder benefits through their implementation of these provider directory requirements, particularly in underserved or rural areas where there may be limited access to the internet?

4. Telehealth has become a vital means of providing health care, including mental health and substance use disorder care, especially in rural areas and in light of the COVID–19 PHE. For the duration of any plan year beginning before the end of the COVID–19 PHE, the Departments issued guidance providing relief from the group market reforms under part 7 of ERISA, title XXVII of the PHS Act, and chapter 100 of the Code for a group health plan (and health insurance coverage offered in connection with a group health plan) sponsored by a large employer that solely provides benefits for telehealth or other remote care services offered only to employees (or their dependents) who are not eligible for coverage under any other group health plan offered by that employer.[179] However, these arrangements were required to continue to comply with certain Federal group market reforms, including the requirements under MHPAEA.[180] How and to what extent has this guidance affected mental health and substance use disorder care and access? Would any further safeguards be needed? How can the Departments use telehealth or other remote care services to enhance access to mental health and substance use disorder treatment under the Departments' existing authority for both routine and crisis care for behavioral health conditions, including through parity requirements with respect to financial requirements and treatment limitations?

5. Under the internal claims and appeals and external review rules implementing the Affordable Care Act, which are generally applicable to all non-grandfathered group health plans and non-grandfathered group and individual health insurance coverage, claim denials related to medical judgment (including for mental health and substance use disorder benefits) are eligible for external review.[181] The internal claims and appeals rules also provide that claimants (or their authorized representatives) are entitled to, upon request and free of charge, reasonable access to and copies of all documents, records, and other information relevant to the claimant's claim for benefits.[182] This includes documents with information about the processes, strategies, evidentiary standards, and other factors used to apply an NQTL with respect to medical/surgical benefits and mental health or substance use disorder benefits under the plan.[183] How can the Departments leverage ERISA's and the Affordable Care Act's existing claims procedure requirements to help facilitate access to mental health and substance use disorder benefits? For example, if a plan or issuer denies a mental health or substance use disorder benefit based on the plan's or issuer's determination that a lower level of care would be more appropriate, should the plan or issuer be required to identify the relevant lower level of care? Should plans and issuers be required to provide an explanation of how a particular NQTL was applied to particular benefits, beyond what is currently required by the claims procedure rules or other related provisions?

6. Currently, the minimum value rules under HHS and Treasury regulations at 45 CFR 156.145 and 26 CFR 1.36B–6, respectively, specify that an employer-sponsored plan provides minimum value only if the percentage of the total allowed costs of benefits provided under the plan is greater than or equal to 60 percent, and the benefits under the plan include substantial coverage of inpatient hospital services and physician services. Should HHS and Treasury consider amending the minimum value rule so that it would apply separately and independently to medical/surgical benefits, and to mental health and substance use disorder benefits? Should HHS and Treasury consider amending the minimum value rule to require substantial coverage of mental health and substance use disorder benefits? If so, how should ''substantial coverage'' be defined in that context?

7. As HHS oversaw the transition to 988 as the new easy-to-remember 3-digit code to access life-saving services through the Suicide & Crisis Lifeline, (*https://www.samhsa.gov/find-help/988*), there has been increased attention to current gaps in access to and provision of a full continuum of behavioral health crisis services. Final rules under MHPAEA do not specifically address mobile crisis services. Similarly, in the establishment of EHBs as part of required benefits for non-grandfathered individual and small group coverage under the Affordable

[177] *See* Code section 4980D.

[178] 79 FR 14051 (March 12, 2014); FAQs about Affordable Care Act Implementation (Part XXVII) (May 26, 2015), Q4–5, available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-xxvii.pdf* and *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/ACA-FAQs-Part-XXVII-MOOP-2706-FINAL.pdf*.

[179] *See* FAQs Part 43, Q14.

[180] *Id.*

[181] *See* 26 CFR 54.9815–2719, 29 CFR 2590.715–2719, and 45 CFR 147.136. Grandfathered plans and issuers must also extend external review to adverse benefit determinations to items and services within the scope of the requirements for out-of-network emergency services, nonemergency services performed by nonparticipating providers with respect to patient visits to certain types of participating facilities, and air ambulance services furnished by nonparticipating providers of air ambulance services under the No Surprises Act, including for denials related to compliance with such requirements. Such items and services may include mental health and substance use disorder services. *See* 26 CFR 54.9815–2719(a)(1)(ii), 29 CFR 2590.715–2719(a)(1)(ii), and 45 CFR 147.136(a)(1)(ii).

[182] 26 CFR 54.9815–2719(b)(2)(ii)(C), 29 CFR 2590.715–2719(b)(2)(i) and (b)(2)(ii)(C), 45 CFR 147.136(b)(2)(i) and (b)(2)(ii)(C), and 29 CFR 2560.503–1(h)(2)(iii).

[183] 26 CFR 54.9812–1(d)(3), 29 CFR 2590.712(d)(3), and 45 CFR 146.136(d)(3).

Care Act, there is no specific reference to behavioral health crisis services as part of the EHB categories. The Departments are interested in determining if there are questions as to how these services fit within the existing categories for either MHPAEA, or the EHB categories. Are there aspects of community-based behavioral health crisis services that the Departments should address in the context of MHPAEA? Should the Departments ensure that community-based behavioral health crisis services are classified in the same way as particular medical/surgical services, and what are those particular services? Should crisis call/text/chat center services, mobile crisis and stabilization services be specifically included as EHBs? Are there ways the Departments can increase access to crisis services with current authorities, including in rural or underserved areas in which there are several challenges to accessing care? How can parity be strengthened across the behavioral health crisis services landscape, including in areas with shortages for behavioral health providers? How can the Departments collaborate with State and local agencies to improve access to existing and future behavioral health crisis services?

V. Regulatory Impact Analysis

A. Summary—Departments of Health and Human Services and Labor

The Departments have examined the effects of these proposed rules as required by Executive Order 12866,[184] Executive Order 13563,[185] the Paperwork Reduction Act of 1995,[186] the Regulatory Flexibility Act,[187] section 202 of the Unfunded Mandates Reform Act of 1995,[188] and Executive Order 13132.[189]

1.1. Executive Orders 12866 and 13563—Departments of Health and Human Services and Labor

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Under Executive Order 12866, ''significant'' regulatory actions are subject to review by the Office of Management and Budget (OMB). As amended by Executive Order 14094 [190] entitled ''Modernizing Regulatory Review'' section 3(f) of the Executive order defines a ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may:

(1) have an annual effect on the economy of $200 million or more (adjusted every 3 years by the Administrator of the Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, Territorial, or Tribal governments or communities;

(2) create a 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 legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

It has been determined that these proposed rules are significant within the meaning of section 3(f)(1) of the Executive order. Therefore, the Departments have provided an assessment of the potential costs, benefits, transfers, and alternatives associated with these proposed rules, and OMB has reviewed these proposed rules.

1.2. Introduction and Need for Regulations

As explained in section I.A of this preamble, mental health is crucial to a person's overall wellbeing, and access to quality mental health and substance use disorder treatment is as essential for health as access to medical/surgical treatment. Moreover, failure to treat mental health issues can be costly. For example, depression is associated with increased risk of cardiovascular disease, diabetes, stroke, Alzheimer's disease, and osteoporosis, and an untreated substance use disorder may result in hospital emergency room care for a drug overdose.[191] Individuals with mental health conditions or substance use disorders have faced stigma, discrimination, and other barriers inside and outside of the health care system, which can operate as impediments to seeking and obtaining treatment. In 2021, approximately 40 percent of adults 18 and older with a perceived unmet need for mental health services reported that they did not receive services because they could not afford the cost, almost 11 percent thought it may cause their community to have a negative opinion about them, almost 8 percent thought it might impact their job, and almost 12 percent were concerned about confidentiality.[192] Despite deterrents to seeking treatment, the need for these services has only increased, as a reported 41 percent of U.S. adults experienced high levels of psychological distress during the COVID–19 pandemic.[193]

In 2013, the Departments issued final regulations to implement MHPAEA.[194] The 2013 final regulations expanded upon MHPA 1996, which required parity in aggregate lifetime and annual dollar limits between mental health benefits and medical/surgical benefits. MHPAEA additionally applies the parity requirements to substance use disorder benefits and provides that the financial requirements (such as deductibles, copays, and coinsurance) and treatment limitations (such as day or visit limits) imposed on mental health or substance use disorder benefits cannot be more restrictive than the predominant financial requirements and treatment limitations that apply to substantially all medical/surgical benefits in a classification. MHPAEA also prohibits separate treatment limitations that apply only to mental health and substance use disorder benefits.

Since 2013, the Departments have provided extensive guidance and compliance assistance materials to the regulated community, State regulators, and other interested parties and conducted regular outreach initiatives to facilitate the implementation and enforcement of MHPAEA. The Departments also issued reports to

[184] Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

[185] Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 18, 2011).

[186] 44 U.S.C. 3506(c)(2)(A) (1995).

[187] 5 U.S.C. 601 *et seq.* (1980).

[188] 2 U.S.C. 1501 *et seq.* (1995).

[189] Federalism, 64 FR 153 (Aug. 4, 1999).

[190] Executive Order 14094, 88 FR 21879 (Apr. 6, 2023).

[191] Government Accountability Office. ''Behavioral Health: Research on Health Care Costs of Untreated Conditions is Limited,'' GAO–19–274, February 2019.

[192] Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Behavioral Health Statistics and Quality, National Survey on Drug Use and Health, 2021. Table 6.45B.

[193] Pasquini, Giancarlo, and Scott Keeter. Pews Research Center. ''At Least Four-in-Ten US Adults Have Faced High Levels of Psychological Distress During COVID–19 Pandemic.'' (2022).

[194] 78 FR 68240 (Nov. 13, 2013).

Congress highlighting this work. In addition, Congress has enacted several laws that build on MHPAEA, including the Cures Act, the SUPPORT for Patient and Communities Act (SUPPORT Act),[195] and most recently, the CAA, 2021 and 2023.

Prior to the CAA, 2021, while group health plans and health insurance issuers were prohibited from imposing NQTLs on mental health and substance use disorder benefits that did not comply with MHPAEA and its implementing regulations, there was no statutory requirement that plans or issuers demonstrate their compliance. Under the CAA, 2021, group health plans and health insurance issuers are now required to perform and document comparative analyses of the NQTLs they impose on mental health and substance use disorder benefits and to provide those analyses to the Departments or to an applicable State authority, as applicable, upon request. The CAA, 2021 compels the Departments to request not fewer than 20 such analyses per year. In addition, the CAA, 2021 imposes steps that the Departments, after reviewing a comparative analysis, must take following an initial determination that the plan's or issuer's NQTL comparative analysis does not comply with MHPAEA. The Departments are also required to report to Congress annually on the results of their review of the requested NQTL comparative analyses.

As documented in the 2022 MHPAEA Report to Congress,[196] the Departments found that none of the NQTL comparative analyses they reviewed contained sufficient information and documentation from plans and issuers upon initial receipt. Moreover, despite plans' longstanding obligations under MHPAEA, it was apparent that many plans and issuers had not carefully designed and implemented their NQTLs to be compliant with MHPAEA prior to the enactment of CAA, 2021. Consequently, many of the comparative analyses appeared to be focused on finding after-the-fact rationales for decisions and designs involving NQTLs rather than reflecting proper attention to MHPAEA compliance in the first place. Similarly, many of the plans and issuers appeared to generate their analyses for the first time in response to the Departments' requests, rather than in advance, as required by law and as a critical part of the design and application of a MHPAEA-compliant NQTL. The 2023 MHPAEA Report to Congress notes that nearly all the comparative analyses reviewed by the Departments during the relevant time period contained insufficient information upon initial receipt and identifies common deficiencies in the comparative analyses prepared by plans and issuers.[197]

The Departments have made an unprecedented commitment to expand their efforts to ensure parity in access to mental health and substance use disorder treatment, guarantee that individuals with mental health conditions and substance use disorders benefit from the full protections required by law, and intend to provide additional guidance to interested parties to facilitate compliance with MHPAEA by issuing these proposed rules.

The proposed amendments to the existing MHPAEA regulations would clarify existing definitions and add new definitions of key terms, clarify the way the parity requirements apply to NQTLs, and provide additional examples of the application of MHPAEA to NQTLs to improve the understanding and ability of the regulated community to comply with MHPAEA. The proposed amendments would also clarify that the way a plan or issuer defines mental health conditions and substance use disorders for purposes of MHPAEA must be consistent with generally recognized independent standards of current medical practice and would add more specificity as to what conditions or disorders plans and issuers must treat as mental health conditions and substance use disorders.

These proposed rules would also add new regulations that would set forth more specific content requirements for comparative analyses required by the CAA, 2021, and outline the process for plans and issuers to provide their comparative analyses to the Departments or an applicable State authority upon request. These proposed rules would also require plans and issuers to collect and evaluate relevant data, including but not limited to claims denials, as well as any other data relevant to NQTLs as required by State law or private accreditation standards. Additionally, for NQTLs related to network composition, these proposed rules would require additional data, including, but not limited to, in-network and out-of-network utilization rates (including data related to provider claim submissions), network adequacy metrics (including time and distance data, and data on providers accepting new patients), and provider reimbursement rates (including as compared to billed charges). Under these proposed rules, plans and issuers must collect and evaluate these data while conducting their comparative analyses, regardless of whether the Departments have requested the analyses. As indicated in section I.A.3.d of this preamble, the type, form, and manner for these data requirements may be further defined in guidance, to allow the Departments to provide more detail and adjust the data requirements as needed to account for enforcement experience and industry trends. Additionally, in these proposed rules, HHS proposes regulatory amendments to implement a provision in the CAA, 2023 that sunsets the election option for self-funded, non-Federal governmental plans to opt out of requirements under MHPAEA.

The Departments have been particularly concerned with barriers to access for individuals seeking mental health or substance use disorder treatments. A 2022 Harris Poll sponsored by the National Council for Mental Wellbeing found that 21 percent of adults with unmet mental health care needs in the past year and 28 percent of those with unmet substance use care needs in the past year reported their inability to get an appointment immediately prevented them from getting needed care.[198] While up to 70 percent of all primary care visits include a behavioral health component,[199] research suggests that primary care providers face significant barriers to delivering these services, including insufficient resources, inadequate related knowledge, and a lack of time.[200] In seeking out specialists,

[195] Public Law 115–271, 132 Stat. 3894 (Oct. 24, 2018). The SUPPORT Act requires that Children's Health Insurance Program (CHIP) plans must cover mental health and substance use disorder services. Financial requirements and treatment limitations applicable to such services shall not differ from those applicable to other medical services under CHIP.

[196] Available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2022-realizing-parity-reducing-stigma-and-raising-awareness.pdf.*

[197] 2023 MHPAEA Report to Congress, available at *www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2023-mhpaea-comparative-analysis.pdf.*

[198] National Council for Mental Wellbeing. ''2022 Access to Care Survey Results,'' May 11, 2022. *https://www.thenationalcouncil.org/wp-content/uploads/2022/05/2022-Access-To-Care-Survey-Results.pdf.*

[199] Health Affairs. ''Combating a Crisis by Integrating Mental Health Services and Primary Care,'' Health Affairs Forefront, July 8, 2022, available at *https://www.healthaffairs.org/do/10.1377/forefront.20220706.603540.*

[200] Loeb, Danielle F., Elizabeth A. Bayliss, Ingrid A. Binswanger, Carey Candrian, and Frank V. Degruy. ''Primary Care Physician Perceptions on Caring for Complex Patients with Medical and Mental Illness.'' *Journal of General Internal Medicine* 27 (2012): 945–952. *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3403152/;* Poghosyan L, Norful AA, Ghaffari A, George M, Chhabra S, Olfson M. ''Mental Health Delivery in

individuals tend to face less adequate mental health provider networks than medical/surgical provider networks through their plan or coverage. According to a 2021 study, which compared the experiences of patients using out-of-network mental health and out-of-network medical/surgical providers, patients who were receiving mental health treatment only from a mental health practitioner rated their plan's mental health provider network as inadequate more frequently than their plan's medical/surgical provider network.[201] The study noted that specialty mental health practitioners are more likely to opt out of participation in mental health provider networks due to a growing workforce shortage of mental health providers, a high demand for mental health services, and low reimbursements for mental health services compared with other specialties, which has consequentially resulted in higher out-of-network utilization rates for mental health care services. In response to these concerns, the Technical Release that is being issued concurrently with these proposed rules would set out principles and seek public comment to inform guidance with respect to required data submissions for NQTLs related to network composition and a potential time-limited enforcement safe harbor.

The Departments have already seen some promising results in response to their reviews of plans' and issuers' comparative analyses under the requirements of the CAA, 2021, including the removal of some exclusions related to treatment for opioid use disorder with methadone (which must be provided through an opioid treatment program) and ABA therapy, as well as the removal of unnecessary gatekeepers for treatment, such as requiring referrals for appointments and pre-authorization for outpatient services, improving direct access for mental health and substance use disorder benefits. The Departments expect that these proposed rules would expand upon these successes as they would provide plans and issuers with a better understanding of the requirements of MHPAEA with respect to NQTLs and improve how they measure, compare, and demonstrate parity, while clarifying appropriate ways for plans and issuers to modify their policies and procedures to meet parity requirements. The Departments believe these proposed rules and any additional guidance would help plans and issuers comply with these proposed requirements, resulting in improved access to and coverage of mental health and substance use disorders, as intended by MHPAEA.

1.3. Baseline

The baseline for this analysis includes the MHPAEA statute, as amended, implementing regulations, and subsequent guidance. Benefits, costs, and transfers are measured as changes from the baseline under these proposed rules. For example, the CAA, 2021 requires that plans and issuers perform and document NQTL comparative analyses. Starting 45 days after the enactment of the CAA, 2021, plans and issuers are required to make their comparative analyses available to the Departments or an applicable State authority upon request. Plans and issuers are required to make comparative analyses and other applicable information required by the CAA, 2021 available to participants and beneficiaries in plans subject to ERISA upon request and to make this information available to participants, beneficiaries, and enrollees in all non-grandfathered group health plans and non-grandfathered group or individual health insurance coverage upon request in connection with an adverse benefit determination.[202] This regulatory impact analysis (RIA) therefore does not include benefits or costs for performing and making available the comparative analyses, as these are already required by the provisions of the CAA, 2021 and are in the baseline, but does take into account the expected impacts of these proposed rules on the preparation of plans' and issuers' comparative analyses and how these proposed rules would impact parity and, in turn, access for participants and beneficiaries needing mental health and substance use disorder treatments.

Similarly, existing guidance that has already generated benefits and costs is not accounted for here. Rather, only those changes resulting from these proposed rules are captured in this analysis.

1.4. Summary of Impacts

These proposed rules propose to define certain terms associated with MHPAEA's requirements for NQTLs and provide that a group health plan (or health insurance issuer offering coverage in connection with a group health plan) may not apply any NQTL to mental health or substance use disorder benefits in any classification that is more restrictive, as written or in operation, than the predominant NQTL that applies to substantially all medical/surgical benefits in the same classification. These proposed rules would require that plans and issuers determine the portion of plan payments for medical/surgical benefits subject to an NQTL based on the dollar amount of all plan payments for medical/surgical benefits in the classification expected to be paid under the plan or coverage for the plan year (or the portion of the plan year after a change in benefits that affects the applicability of the NQTL). Plans and issuers would next be required to determine whether the NQTL applies to substantially all medical/surgical benefits in the classification based on the portion of plan payments for medical/surgical benefits subject to the NQTL to determine whether the NQTL applies to at least two-thirds of all medical/surgical benefits in that classification. Plans and issuers would then need to determine which variation of a given NQTL is predominant (that is, the most common or frequent variation). Once this is determined, plans and issuers may not apply any NQTL to mental health or substance use disorder benefits in any classification that is more restrictive, as written or in operation, than the predominant NQTL applicable to substantially all medical/surgical benefits in the same classification. An NQTL is restrictive if it imposes conditions, terms, or requirements that limit access to benefits under the terms of the plan or coverage.

These proposed rules also set data requirements and clarify proper documentation of NQTL comparative analyses, which plans and issuers have struggled with, as detailed in the Departments' 2022 Report to Congress [203] and the 2023 Report to Congress,[204] released contemporaneously with these proposed rules. Accordingly, the Departments are of the view that these proposed rules would increase plan and issuer compliance with the requirements for imposing NQTLs under MHPAEA,

Primary Care: The Perspectives of Primary Care Providers.'' Archives of Psychiatric Nursing 2019 Oct; 33(5):63–67. *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7077950/*.

[201] Busch, Susan H., and Kelly Kyanko. ''Assessment of Perceptions of Mental Health vs Medical Health Plan Networks Among US Adults with Private Insurance.'' *JAMA Network Open* 4, no. 10 (2021).

[202] FAQs Part 45, Q6.

[203] 2022 MHPAEA Report to Congress, available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2022-realizing-parity-reducing-stigma-and-raising-awareness.pdf*.

[204] 2023 MHPAEA Report to Congress, available at *www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2023-mhpaea-comparative-analysis.pdf*.

which would in turn expand access to mental health and substance use disorder benefits and help ensure that limitations on mental health and substance use disorder benefits are no more restrictive than the predominant limitations applicable to substantially all medical/surgical benefits in the same classification. In doing so, access to in-network medically necessary treatments would increase for a significant segment of individuals whose health coverage would be affected by these proposed rules,[205] which would ultimately result in better mental health outcomes and lower out-of-pocket costs related to mental health and substance use disorder benefits for participants, beneficiaries, and enrollees.

Plans and issuers would incur costs to comply with the requirements in these proposed rules. However, the Departments have determined that the benefits of these proposed rules justify the costs. In accordance with OMB Circular A–4, Table 1 depicts an accounting statement summarizing the Departments' assessment of the benefits, costs, and transfers associated with these regulatory actions. The Departments are unable to quantify all benefits, costs, and transfers of these proposed rules, but have sought, where possible, to describe these non-quantified impacts.

The effects in Table 1 reflect non-quantified impacts and estimated direct monetary costs resulting from the provisions of these proposed rules.

TABLE 1—ACCOUNTING STATEMENT

Benefits:

- Better understanding of and compliance with MHPAEA by plans and issuers.
- Better health outcomes for those with mental health conditions or substance use disorders, and a reduction in the negative impacts on families, friends, and coworkers of those with untreated or poorly managed mental health conditions or substance use disorders based on their improved access to treatment.
- Better frameworks for determining whether plans and issuers are making decisions and taking actions with respect to mental health and substance use disorder benefits in parity with their decisions and actions regarding medical/surgical benefits.

Costs:

- Costs to plans and issuers to implement changes associated with the revision of plan provisions.
- Increased costs to plans and issuers from expanded coverage and utilization of mental health and substance use disorder services.
- Costs to plans and issuers from collecting and analyzing data and documenting NQTL comparative analyses consistent with the requirements of these proposed rules of approximately $291.0 million in the first year and approximately $117.6 million in subsequent years or between 0.04 percent and 0.01 percent of health insurance premiums.
- Costs to plans and issuers for preparing and mailing the comparative analyses to participants, beneficiaries, and enrollees of approximately $12.1 million annually.
- One-time regulatory review costs to plans and issuers of approximately $64.3 million.
- Potential increase in cost-sharing requirements and/or treatment limitations for medical/surgical care for participants, beneficiaries, and enrollees, if plans and issuers try to achieve parity by imposing new restrictions on medical/surgical coverage, rather than by reducing restrictions on access to mental health or substance use disorder benefits.
- Potential costs to self-funded, non-Federal governmental plans that currently opt out of MHPAEA to come into compliance with requirements under MHPAEA.
- Cost savings to self-funded, non-Federal governmental plans of approximately $11,351 in total from no longer having to send opt-out notices regarding a plan's MHPAEA opt-out election.
- Cost savings for the Federal Government of approximately $2,469 from fewer opt-out notices being submitted by self-funded, non-Federal governmental plans.

Costs	Estimate	Year dollar	Discount rate (percent)	Period covered
Annualized Monetized	$161.29	2023	7	2023–2032
($million/Year)	156.71	2023	3	2023–2032

Transfers:

- Potential transfers from plans and issuers to participants, beneficiaries, and enrollees resulting in lower out-of-pocket spending on mental health and substance use disorder services.
- Potential transfers from participants, beneficiaries, and enrollees to plans and issuers caused by higher premiums associated with lower cost-sharing requirements, increased utilization of mental health and substance use disorder services, provider network improvements, and increased provider reimbursement rates.
- Potential transfers from primary care providers to mental health providers for the treatment of mental health and substance use disorders as a result of decisions by participants, beneficiaries, and enrollees to obtain treatment from a specialist instead of a primary care provider.

[205] Wen, Hefei, Janet R. Cummings, Jason M. Hockenberry, Laura M. Gaydos, and Benjamin G. Druss. ''State Parity Laws and Access to Treatment for Substance Use Disorder in the United States: Implications for Federal Parity Legislation.'' JAMA Psychiatry 70, no. 12 (2013): 1355–1362.

1.5. Affected Entities

1.5.1. Plans

Employers with 50 or more employees are required to comply with MHPAEA. Employers with less than 50 employees are required to comply with MHPAEA as part of the EHB requirements of the Affordable Care Act. In this analysis, plan size is used as a proxy for employer size to determine if a plan is affected. The Departments estimate that 1,488,000 fully-insured, non-grandfathered plans with less than 50 participants and approximately 409,800 ERISA-covered group health plans with 50 or more participants, of which approximately 250,000 are self-insured group health plans, would be affected by these proposed rules.[206] In addition, the Departments estimate that these proposed rules would affect approximately 90,100 non-Federal governmental health plans,[207] of which approximately 14,400 are plans with 50 or more participants.[208] The Departments seek comment on these estimates.

HHS estimates that 230 self-funded, non-Federal governmental plans would be affected by the implementation of the CAA, 2023 provision that sunsets the MHPAEA opt-out election.[209] HHS is aware of at least four plans with collective bargaining agreements whose sponsors' MHPAEA opt-out elections could be in effect beyond 2024. However, other plans might be similarly situated. HHS does not have precise information about the number of participants and beneficiaries of the plans that have elected to opt out of requirements under MHPAEA, as those plans are not required to report this information to HHS. However, HHS estimates that there are approximately 253 participants, on average, in each self-funded, non-Federal governmental plan.[210] HHS also estimates that there is one beneficiary for each plan participant on average. Therefore, approximately 116,500 participants and beneficiaries would be affected by this proposed provision.[211] HHS seeks comments on the estimated number of self-funded, non-Federal governmental plans and the estimated number of plan participants and beneficiaries that would be affected by the implementation of the CAA, 2023 provision that sunsets the MHPAEA opt-out election.

1.5.2. Participants, Beneficiaries, and Enrollees Receiving Mental Health and Substance Use Disorder Treatment

There are approximately 55,403,000 participants and 47,990,000 beneficiaries in ERISA-covered group health plans with 50 or more participants,[212] approximately 17,841,000 participants and 15,198,000 beneficiaries in non-Federal governmental plans with 50 or more participants,[213] an estimated 11,187,000 participants and 10,914,000 beneficiaries in ERISA covered, non-grandfathered, fully insured health plans with less than 50 participants,[214] and approximately 11,000,000 individual health insurance coverage

[206] Employers with less than 50 employees are required to comply with MHPAEA as part of the EHB requirements of the ACA. The Departments estimate that there are 2,134,934 ERISA-covered group health plans with less than 50 participants based on data from the 2021 Medical Expenditure Panel Survey—Insurance Component and the 2019 County Business Patterns from the Census Bureau. The Departments also estimate that 83 percent of group health plans with less than 50 participants are fully insured based on data from the 2021 Medical Expenditure Panel Survey Insurance Component (MEPS–IC) and the 2019 County Business Patterns from the Census Bureau. The 2020 Kaiser Employer Health Benefits Survey reported that in 2020, 16 percent of firms offering health benefits offered at least one grandfathered health plan (Kaiser Employer Health Benefits Survey (*Source:* KFF. 2020 Kaiser Employer Health Benefits Survey. *https://files.kff.org/attachment/Report-Employer-Health-Benefits-2020-Annual-Survey.pdf*)). Thus, the Departments have calculated the number of fully insured, non-grandfathered plans with less than 50 participants in the following manner: 2,134,934 small ERISA-covered group health plans × 83% × (100% minus 16%) = 1,488,476. MHPAEA only applies to ERISA plans in the group market with 50 or more participants that offer mental health or substance use disorder benefits. The Departments have not identified what share of plans with 50 or more participants offer mental health or substance use disorder benefits and so has assumed that all of these plans offer them. Based on the 2021 MEPS–IC and the 2019 County Business Patterns from the Census Bureau, the Departments estimate 61 percent of ERISA-covered group health plans with 50 or more participants are self-insured. Thus, the Departments calculate the number of self-insured group health plans in the following manner: 409,822 ERISA-covered group health plans with 50 or more participants × 61% = 249,991.

[207] Based on the 2017 Census of Governments, there are 90,126 State and local entities. The Departments assume there is one plan per entity on average. Therefore, the Departments estimate that there are 90,126 non-Federal governmental health plans.

[208] MHPAEA applies to non-Federal governmental employers with 50 or more employees that offer mental health or substance use disorder benefits. The Departments have not identified what share of non-Federal governmental plans with 50 or more participants offer mental health or substance use disorder benefits and so have assumed that all of these plans offer them. Using data from the 2021 Medical Expenditure Panel Survey Insurance Component (MEPS–IC) and the 2019 County Business Patterns from the Census Bureau, the Departments estimates that 16 percent of ERISA-covered group health plans have 50 or more participants. The Departments use the percent of ERISA-covered group plans with 50 or more participants as a proxy for the percent of non-Federal governmental plans with 50 or more participants. Therefore, the Departments estimate that there are 14,420 public, non-Federal employer group health plans with 50 or more participants that offer mental health or substance use disorder benefits. (90,126 non-Federal governmental health plans × 16 percent of plans with 50 or more employees = 14,420).

[209] Based on the HIPAA opt-out elections for self-funded, non-Federal governmental plans, as of January 6, 2023. Available at *https://www.cms.gov/files/document/hipaaoptouts03182021.pdf.*

[210] According to data from the Medical Expenditure Panel Survey—Insurance Component (2021) (available at: *https://meps.ahrq.gov/mepsweb/https://meps.ahrq.gov/mepsweb/*), there are 18,828,246 State and local government employees, and 69.1 percent of these employees (13,010,318) are enrolled in health coverage through their jobs. Of these employees, 64.4 percent (8,378,645 employees) are participants in self-funded plans. Based on data from the 2017 Census of Governments (available at: *https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html*), there are 90,126 State and local government entities, and according to the Medical Expenditure Panel Survey (2021), 36.7 percent, or 33,076, of State and local government entities self-fund at least one plan. Therefore, the average number of participants per self-funded, non-Federal governmental plan is (8,378,645/33,076) 253.3. Since HHS also estimates that there is 1 beneficiary for each plan participant on average, the average number of participants and beneficiaries per self-funded non-Federal governmental plan is (253.3 × 2) 506.6.

[211] 230 self-funded, non-Federal governmental plans that have elected to opt out of the requirements under MHPAEA × approximately 506.6 participants and beneficiaries for each self-funded, non-Federal governmental plan on average = 116,500.

[212] Employers with 50 or more employees are required to comply with MHPAEA. Employers with less than 50 employees are required to comply with MHPAEA as part of the EHB requirements of the Affordable Care Act. The Departments have not identified what share of plans with 50 or more participants offer mental health or substance use disorder benefits and so has assumed that all of these plans offer them. The Departments estimate that there are 55,402,568 participants in ERISA-covered group health plans with 50 or more participants. Estimates are based off Department tabulations of the March 2021 Current Population Survey (CPS) Auxiliary Data. *https://www.dol.gov/agencies/ebsa/researchers/data/auxiliary-data.*

[213] MHPAEA only applies to non-Federal governmental health plans with 50 or more participants that offer mental health or substance use disorder benefits. The Departments have not identified what share of plans with 50 or more participants offer mental health or substance use disorder benefits and so has assumed that all of these plans offer them. The Departments estimate that there are 17,840,590 participants in non-Federal governmental health plans with 50 or more participants. Estimates are based on Department tabulations of the March 2021 CPS Auxiliary Data. *https://www.dol.gov/agencies/ebsa/researchers/data/auxiliary-data.*

[214] The Departments estimate that there are 26,311,273 participants and beneficiaries in fully insured, private-sector health plans with less than 50 participants based off Department tabulations of the March 2021 CPS Auxiliary Data. *https://www.dol.gov/agencies/ebsa/researchers/data/auxiliary-data.* Assuming, based on Kaiser Family Foundation (KFF) assumptions that 84 percent of participant and beneficiaries are in non-grandfathered plans (*Source:* KFF. 2020 KFF Employer Health Benefits Survey. *https://files.kff.org/attachment/Report-Employer-Health-Benefits-2020-Annual-Survey.pdf*), this would translate into an estimated 22,101,470 participants and beneficiaries in fully-insured, private-sector, non-grandfathered plans with less than 50 participants.

policyholders (with approximately 15,000,000 total enrollees).[215]

The receipt of behavioral health services has been increasing since the enactment of MHPAEA. Between 2007 and 2017, private insurance claim lines for behavioral health diagnoses increased by 320 percent.[216] Claims data show that between 2013 and 2019, the percentage of the employment-based coverage population under the age of 65 diagnosed with major depressive disorder increased from 4.1 percent to 5.3 percent, and the percentage of the population diagnosed with anxiety increased from 4.8 percent to 8.1 percent.[217] In 2020, 41 million Americans enrolled in employment-based coverage, including 6 million children, received mental health support, which constituted nearly 25 percent of employment-based health plan participants and beneficiaries.[218] A 2021 survey by the Substance Abuse and Mental Health Services Administration (SAMHSA) indicated that among adults aged 18 or older, 22.8 percent (or 57.8 million people) had any mental illness and 5.5 percent (or 14.1 million people) had serious mental illness in the past year.[219]

The COVID–19 PHE has exacerbated the need for mental health and substance use disorder treatment. During the pandemic, many adults consistently reported anxiety and depressive disorders symptoms, with 4 in 10 adults reporting symptoms in February 2021. Two years later, even as the pandemic receded from its peak, approximately 3 in 10 adults were still reporting symptoms of anxiety and depression.[220] A 2021 study also found that a COVID–19 diagnosis increased the incidence of a psychiatric diagnosis within the following 14 to 90 days. Specifically, the study found that approximately 20 percent of adults who received a COVID–19 diagnosis, including adults with and without a past psychiatric diagnosis, were later diagnosed with a mental health disorder.[221]

The pandemic may have long-term effects on mental health and substance use disorders. A 2022 study examined the chronic effects of the pandemic on the mental health of veterans and found that COVID–19 survivors were associated with a higher risk of developing mental health disorders, including anxiety, stress, depression, substance use, and neurocognitive decline, compared to individuals who did not have COVID–19.[222] Another 2022 study examined the mental health outcomes of COVID–19 survivors during the twelve months following their infection and found that COVID–19 survivors reported a high prevalence of depression, anxiety, and PTSD at both the six- and twelve-months follow-up, indicating that the pandemic has long-term adverse mental health impacts on COVID–19 survivors.[223] Finally, a 2023 study found that the pandemic resulted in a long-term increase in the number of psychiatric inpatient admissions, suggesting that there is a post-pandemic need to prioritize psychiatric care.[224]

1.5.3. Issuers and TPAs

The Departments estimate that these proposed rules would affect 476 health insurance issuers that provide benefits in the group and individual health insurance markets, with 1,500 issuer/State combinations.[225] There are an estimated 205 TPAs that provide services to health plans.[226] Finally, the Departments estimate that these proposed rules would affect at least 40 managed behavioral healthcare organizations providing mental health and substance use disorder benefits to group health plans.[227]

Issuers and TPAs provide key support for plan compliance with laws and regulations, including MHPAEA. The Departments' understanding, based on discussions with the regulated community and numerous direct investigations of plans, specifically the review of comparative analyses, is that issuers of fully insured health plans provide a menu of coverage designs from which interested parties select their coverage. The issuers, as the designers of the products and, commonly, the claims administrators, make decisions about what NQTLs to use and how to implement them. Issuers, along with TPAs, are also typically the owners of claims and other data related to plan administration.

Even for plans that self-insure, it is common practice to have issuers and TPAs provide expertise in plan design, administer the claims and networks, and drive compliance (or non-compliance) with MHPAEA. Self-insured plans rarely build independent provider networks and instead rely on those built by issuers and TPAs. According to the 2019 KFF Employer Benefits Survey, only 8 percent of large, self-insured plans with 200 or more employees reported that they directly contracted with hospitals and health systems, independent of the plan's TPA, in order to provide health care and services separate from the provider networks included in the plan network.[228] The Departments analyzed

[215] Based on medical loss ratio reports submitted by issuers for the 2021 reporting year, the number of policyholders in individual health insurance coverage offered in the individual market is approximately 11 million, and the number of enrollees was approximately 15,000,000. *https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.*

[216] Gelburd, Robin. ''The Mental Health Parity Act: 10 Years Later.'' *American Journal of Managed Care* (Nov. 22, 2018). *https://www.ajmc.com/view/the-mental-health-parity-act-10-years-later.*

[217] Fronstin, Paul and Christopher Roebuck. ''How Do High-Deductible Health Plans Affect Use of Health Care Services and Spending Among Enrollees with Mental Health Disorders?'' EBRI Issue. No. 555, Figure 3. (March 10, 2022) Available at *https://www.ebri.org/docs/default-source/ebri-issue-brief/ebri_ib_555_mentalhealth-10mar22.pdf?sfvrsn=aec3b2f_2.*

[218] America's Health Insurance Plans. ''How Employer-Provided Coverage Improves Access to Mental Health Support,'' May 2022. *https://www.ahip.org/documents/202205-CaW_MentalHealth-v03.pdf.*

[219] SAMHSA. ''Key Substance Use and Mental Health Indicators in the United States: Results from the 2021 National Survey on Drug Use and Health.'' pp. 39–40. *https://www.samhsa.gov/data/sites/default/files/reports/rpt39443/2021NSDUHFFRRev010323.pdf.*

[220] Panchal, Nirmita, Heather Saunders, Robin Rudowitz, and Cynthia Cox. ''The Implications of COVID–19 for Mental Health and Substance Use,'' KFF Issue Brief March 20, 2023. *https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/.*

[221] Taquet, Maxime, Sierra Luciano, John R. Geddes, and Paul J. Harrison. ''Bidirectional Associations Between COVID–19 and Psychiatric Disorder: Retrospective Cohort Studies Of 62,354 COVID–19 Cases in the USA.'' *The Lancet Psychiatry* 8, no. 2 (2021): 130–140.

[222] Xie, Yan, Evan Xu, and Ziyad Al-Aly. ''Risks of Mental Health Outcomes in People with Covid–19: Cohort Study.'' *The BMJ* 376 (2022), available at *https://www.bmj.com/content/376/bmj-2021-068993.*

[223] Mazza, Mario Gennaro, Mariagrazia Palladini, Rebecca De Lorenzo, Beatrice Bravi, Sara Poletti, Roberto Furlan, Fabio Ciceri et al. ''One-Year Mental Health Outcomes in a Cohort of COVID–19 Survivors.'' *Journal of Psychiatric Research* 145 (2022): 118–124.

[224] Warwicker, Sean, Denise Sant, Adrian Richard, Jake Cutajar, Annalise Bellizzi, Gertrude Micallef, Daniel Refalo, Liberato Camilleri, and Anton Grech. ''A Retrospective Longitudinal Analysis of Mental Health Admissions: Measuring the Fallout of the Pandemic.'' *International Journal of Environmental Research and Public Health* 20, no. 2 (2023): 1194.

[225] The Departments' estimate of the number of health insurance insurers and the number of issuer/State combinations is based on medical loss ratio reports submitted by issuers for the 2021 reporting year. (*Source:* Centers for Medicare & Medicaid Services. ''Medical Loss Ratio Data and System Resources'' (2021). *https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.*)

[226] Non-issuer TPAs based on data derived from the 2016 benefit year reinsurance program contributions.

[227] The Departments' estimate of the number of insurers is based on industry trade association membership, including the National Behavioral Consortium (*https://www.nbcgroup.org/member-directory/*) and the Association for Behavioral Health and Wellness (*https://abhw.org/about/*). Please note that these estimates could undercount small State-regulated insurers.

[228] KFF. ''KFF Employer Health Benefits Survey, 2019.'' (September 25, 2019) Table 14.15. *See*

2020 Form 5500 Schedule C (Service Provider Information) filings of self-insured health plans and determined that 89 percent of those plans indicated that they contracted with a TPA.[229] This statistic provides the Departments with an estimate for the percent of self-insured plans that could perform the work for themselves.

Issuers and TPAs are therefore the ones mostly likely, and the ones the Departments have overwhelmingly observed, performing the work to evaluate NQTLs and provide the comparative analysis and required data. These proposed rules are expected to continue this trend of issuers and TPAs performing the required work for plans. While plans could be charged for these services, this arrangement provides for economies of scale in compliance as issuers evaluate NQTLs, produce or assist in producing the comparative analyses for their products and, in combination with TPAs, provide support for other requirements. Because TPAs and insurance companies providing administrative services only (ASO) overwhelmingly design the plans, administer the networks, manage claims, provide plan services, maintain and hold the data relevant to the comparative analyses, and drive MHPAEA compliance, they are in the best position to conduct comparative analyses, and to provide the analyses in an efficient and cost-effective manner. The Departments expect, as reflected in their own direct observations of the comparative analyses process, that TPAs and issuers would perform most of the work associated with the analyses because they can do so at the lowest cost and greatest scale. Particularly for self-insured plans, however, there may be some additional work required by individual plans to complete the comparative analysis prepared by the issuer to address unique plan issues. The Departments seek comments on these observations.

1.6. Benefits

The Departments expect that these proposed rules, if finalized, would improve the quality of the comparative analyses conducted by plans and issuers, as required by the CAA, 2021, help plans and issuers better understand and fulfill their obligations under MHPAEA, and promote greater transparency regarding discrepancies between mental health and substance use disorder benefits and medical/surgical benefits. By specifying more details on how to perform and document their NQTL comparative analyses, these proposed rules would increase plan and issuer compliance with the requirements for imposing NQTLs under MHPAEA, and by doing so, increase access to mental health and substance use disorder services. Thus, these proposed rules would generate the following economic and societal benefits for participants, beneficiaries, and enrollees:

- better understanding of and compliance with MHPAEA by plans and issuers,
- greater access to mental health and substance use disorder services,
- better health outcomes among those with mental health conditions or substance use disorders,
- reduced adverse impacts on the families, friends, and coworkers of people who suffer from untreated or poorly managed mental health conditions or substance use disorders, and
- better frameworks for the Departments, plans, and issuers to determine whether plans' and issuers' decisions and actions with respect to mental health and substance use disorder treatments are in parity with their decisions and actions regarding medical/surgical treatments.

This analysis provides a mainly qualitative discussion of the benefits associated with the proposed amendments to the existing MHPAEA regulations, as the Departments do not have the data necessary to quantify the likely benefits associated with ensuring that NQTLs for mental health and substance use disorder benefits are in parity with medical/surgical benefits. Similarly, this analysis provides a qualitative discussion of the benefits of these proposed rules and discusses how the proposed additional guidance would result in better compliance with the rules related to NQTLs and access to mental health and substance use disorder benefits. The Departments invite comments and data related to how it might quantify these benefits as part of these proposed rules.

1.6.1. Better Understanding of and Compliance With MHPAEA by Plans and Issuers

By placing renewed focus on the elimination of more restrictive barriers to access mental health and substance use disorder benefits, standardizing the definitions associated with parity calculations for mental health and substance use disorder benefits and medical/surgical benefits, providing examples of the application of MHPAEA to NQTLs, and setting forth the content, and data documentation requirements of the NQTL comparative analyses, these proposed rules would clarify and strengthen the obligations of plans and issuers, and promote compliance with MHPAEA. In the course of implementing these proposed rules, parties would adjust their policies and procedures in order to come into compliance and better serve participants, beneficiaries, and enrollees. These proposed rules also help the Departments identify when they need to intervene.

The Departments have already seen, in response to reviews of comparative analyses and requests for additional information, revisions to policies that remove treatment limitations. These proposed rules would help parties better understand what they need to do to comply with MHPAEA, reduce uncertainty about compliance status, and help plans and issuers better identify areas they need to improve.

By improving compliance with MHPAEA, these proposed rules would have the greatest direct impact on individuals who currently forego treatments for a mental health condition or substance use disorder because their health plan imposes barriers to coverage of these services. The Departments cannot estimate how large this impact would be, though a 2021 survey by SAMHSA indicated that 19 percent of U.S. adults with mental illness that did not receive treatment in the past year at least partially attributed foregoing these services to their health insurance offering insufficient coverage for mental health services.[230]

These proposed rules would also directly benefit individuals who are currently enrolled in a plan with inadequate or narrow networks with regard to mental health and substance use disorder providers compared to the networks for medical/surgical benefits, which prevent participants, beneficiaries, and enrollees from being able to make appointments with in-network providers and timely accessing needed care. A 2017 study of Affordable Care Act Marketplace provider networks

https://www.kff.org/report-section/ehbs-2019-section-14-employer-practices-and-health-plan-networks/.

[229] Because many plans are exempt from filing a Form 5500, the Department only identified 37,934 self-insured health plan filings for 2020. Of these, only 5,537 plans (or roughly 15 percent) attached a Schedule C. Of those plans, 4,920 (or roughly 89 percent) indicated they paid compensation, either directly or indirectly, of at least $5,000 for either claims processing, contract administration, or both.

[230] SAMHSA. ''Key Substance Use and Mental Health Indicators in the United States: Results from the 2021 National Survey on Drug Use and Health.'' Table 6.50B. The question does not distinguish between sources of insurance, available at *https://www.samhsa.gov/data/sites/default/files/reports/rpt39443/2021NSDUHNNR122322/2021NSDUHNNR122322.htm.*

found that mental health networks were significantly narrower on average than primary care networks, providing less than half the share of providers practicing within a State-level market.[231] A 2022 survey of private and non-Federal public employers found that while 82 percent of employers believed that there is a sufficient number of primary care providers in the plan networks, only 44 percent of employers believed there is a sufficient number of behavioral health providers in the plan networks.[232] Moreover, a 2022 study of Medicaid patients in Oregon found that mental health services remained inaccessible for many patients due to phantom networks, which are rosters of network providers that list, as in-network providers, mental health and substance use disorder professionals and facilities who are not, in fact, available to participants, beneficiaries, and enrollees for network treatment.[233] Phantom networks are also reportedly an issue for participants and beneficiaries of group health plans.[234] A national survey of privately insured individuals that received mental health care treatment found that more than half of those patients that used a provider directory encountered inaccuracies which made them more likely to be treated by an out-of-network provider, and four times as likely to receive a surprise, out-of-network bill.[235] In light of this concern, these proposed rules particularly highlight parity in network composition as an area that requires clarification in the NQTL space.

1.6.2. Greater Access to Mental Health and Substance Use Disorder Treatments

By improving plan and issuer understanding of and compliance with the requirements under MHPAEA, clarifying when and how comparative analyses of NQTLs should be conducted, and ensuring that the NQTLs are no more restrictive for mental health and substance use disorder benefits than for medical/surgical benefits, these proposed rules would improve compliance and, in turn, expand access to and utilization of mental health and substance use disorder services.[236] Utilization-related evidence is reviewed in section 1.7, below. The implementation of the CAA, 2023 provision that sunsets the MHPAEA opt-out election would reduce financial and non-financial barriers to accessing mental health and substance use disorder treatment for participants and beneficiaries of plans sponsored by self-funded, non-Federal governmental entities that currently elect to opt out of requirements under MHPAEA. This would result in increased access to care and lead, as discussed in more detail in the next section, to better health outcomes for plan participants and beneficiaries with a need for mental health care or substance use disorder services.

1.6.3. Better Health Outcomes Among Those With Mental Health Conditions and Substance Use Disorders

By expanding access to mental health and substance use disorder services, these proposed rules may also result in better mental health and substance use disorder outcomes. A 2013 study found that State parity laws were associated with a five percent decrease in suicides.[237] A 2022 study found that severe maternal morbidity (SMM) among childbearing individuals with commercial insurance decreased by 53 percent between 2008 and 2019. The authors suggested implementation of MHPAEA may have had a role in the decreasing rates of SMM.[238] An improvement in mental health and substance use disorder outcomes can also improve overall physical health outcomes. A 2017 study found that better past mental health was associated with more physical activity and social interactions, which resulted in an improvement in the present physical health.[239]

1.6.4. Reduced Adverse Impacts on the Families, Friends, and Coworkers of People Who Suffer From Untreated or Poorly Managed Mental Health Conditions and Substance Use Disorders

These proposed rules would help employees and their families meet their mental health care needs, and thus, may improve the productivity and resulting earnings of workers dealing with mental health and substance use disorder issues. Among adults with any mental health condition in 2021, only 47.2 percent received treatment.[240] Moreover, while 15.6 percent of National Survey on Drug Use and Health respondents 12 and older were classified as needing substance use disorder treatment in 2021, only 6.3 percent received treatment that year.[241] One survey found that more than 85 percent of individuals that did not receive needed mental health or substance use care reported negative impacts, including personal relationship issues, job issues and performing poorly or dropping out of school.[242]

The economic impact of untreated mental health and substance use disorders can be significant. A 2021 study found that the high prevalence of major depressive disorder among U.S. adults has increased workplace costs from $114.6 billion in 2010 to $198.6 billion in 2018.[243] A 2022 study found that, in low and middle-income countries, mental health interventions significantly improved work-related outcomes. Relative to a control group, participants receiving a mental health intervention experienced a 26 percent decrease in their inability to work and participant absence rates declined by 16 percent. The authors noted that these economic effects are ''somewhat larger'' for populations with severe mental

[231] Zhu, Jane M., Yuehan Zhang, and Daniel Polsky. ''Networks in ACA Marketplaces are Narrower for Mental Health Care than for Primary Care.'' *Health Affairs* 36, no. 9 (September 2017): 1624–1631.

[232] Kaiser Family Foundation. ''KFF Employer Benefits Survey, 2022.'' (October 17, 2022) *https://www.kff.org/report-section/ehbs-2022-summary-of-findings.*

[233] Zhu, Jane M., Christina J. Charlesworth, Daniel Polsky, and K. John McConnell. ''Phantom Networks: Discrepancies Between Reported and Realized Mental Health Care Access in Oregon Medicaid.'' *Health Affairs* 41, no. 7 (2022): 1013–1022.

[234] *See* Ellison, Katherine, ''73 Doctors and None Available: How Ghost Networks Hamper Mental Health Care.'' The Washington Post (Feb. 19, 2022), *available at https://www.washingtonpost.com/health/2022/02/19/mental-health-ghost-network/.*

[235] Busch, Susan H. and Kelly A. Kyanko. ''Incorrect Provider Directories Associated with Out-of-Network Mental Health Care and Outpatient Surprise Bills.'' *Health Affairs,* Vol. 39 No. 6 (June 2020): 975–083.

[236] Wen, Hefei, Janet R. Cummings, Jason M. Hockenberry, Laura M. Gaydos, and Benjamin G. Druss. ''State Parity Laws and Access to Treatment for Substance Use Disorder in the United States: Implications for Federal Parity Legislation.'' *JAMA Psychiatry* 70, no. 12 (2013): 1355–1362.

[237] Lang, Matthew. ''The Impact of Mental Health Insurance Laws on State Suicide Rates.'' *Health Economics* 22, no. 1 (2013).

[238] Admon, Lindsay, Vanessa Dalton, Giselle Kolenic, Anca Tilea, Stephanie V. Hall, and Kara Zivin. ''MHPAEA/ACA Policy Implementation and Severe Maternal Morbidity Among Commercially Insured Individuals, 2008–2019 [A192].'' *Obstetrics & Gynecology* 139 (2022): 56S.

[239] Ohrnberger, Julius, Eleonora Fichera, and Matt Sutton. ''The Relationship between Physical and Mental Health: A Mediation Analysis.'' *Social Science & Medicine* 195 (2017): 42–49.

[240] SAMHSA. ''Key Substance Use and Mental Health Indicators in the United States: Results from the 2021 National Survey on Drug Use and Health.'' Figure 65.

[241] SAMHSA. ''Key Substance Use and Mental Health Indicators in the United States: Results from the 2021 National Survey on Drug Use and Health.'' Figure 54 and 57.

[242] National Council for Mental Wellbeing. ''2022 Access to Care Survey Results,'' May 11, 2022. *https://www.thenationalcouncil.org/wp-content/uploads/2022/05/2022-Access-To-Care-Survey-Results.pdf.*

[243] Greenberg, Paul E., Andree-Anne Fournier, Tammy Sisitsky, Mark Simes, Richard Berman, Sarah H. Koenigsberg, and Ronald C. Kessler. ''The Economic Burden of Adults with Major Depressive Disorder in the United States (2010 and 2018).'' Pharmacoeconomics 39, no. 6 (2021): 653–665.

health disorders, compared to populations with mild mental health disorders.[244] Finally, a 2015 study examined the impact of State parity laws on individuals with moderate levels of mental distress and found that State parity laws were associated with an increase in overall employment, weekly wages, and the number of hours worked per week, and attributed these changes to the increased productivity of these workers.[245]

These proposed rules would also have significant indirect impacts on families and social networks of individuals with untreated or poorly managed mental health conditions and substance use disorders, as well as society at large. By increasing access to services, these proposed rules would lead to more people receiving treatment, reducing the burden on family members and other support systems. This includes untreated maternal mental health conditions (MMHCs) which can lead to a reduced ability to work, increased risk of suicide, increased use of public services such as Medicaid, and worse maternal and child health. A 2022 study of the cost of MMHC to Texas women and their children projected costs for the 2019 birth cohort from the time of conception through five years postpartum to total $2.2 billion.[246] Untreated MMHCs include untreated perinatal mood and anxiety disorders (PMADs), which have been found to account for approximately $48 million in societal costs in Vermont for the average annual birth cohort from conception through five years postpartum, including $12.5 million in productivity loss and $9.4 million in non-obstetric health expenditures.[247] The cost in missed productivity due to workers' fair or poor mental health was estimated as $47.6 billion annually in 2022.[248] A 2022 study found that households with a family member diagnosed with a mental health disorder had lower health status scores compared to households without a mental illness diagnosis, suggesting evidence of family spillover effects on mental illness.[249] Finally, a 2020 study estimated that the societal costs of untreated opioid use disorder was approximately $1.02 trillion, which includes $35 billion in health care costs and $92 billion in lost productivity.[250]

1.7. Costs

These proposed rules aim to promote access to mental health and substance use disorder services under MHPAEA, while seeking to limit costs on plans and issuers. The costs incurred in these activities are discussed below.

A 2019 study which examined the impact of MHPAEA on the utilization of mental health and substance use disorder services in the private, large group employer-sponsored insurance market from 2005 to 2015 found that MHPAEA is positively associated with the utilization of outpatient mental health and substance use disorder benefits.[251] A 2020 study of MHPAEA, using 2007 and 2011–12 data from the National Survey of Children's Health, found that among children and adolescents with family income between 150 and 400 percent of the Federal poverty level in States without prior parity laws, the enactment of MHPAEA resulted in a 2.8 percentage point increase in mental health care utilization.[252] In addition, a 2019 study examined the effectiveness of the national primary care-mental health integration (PC–MHI) initiative of the Veterans Health Administration, which aimed to improve access to mental health services by embedding specialists, care managers, or both in primary care clinics to collaboratively care for veterans with psychiatric illness. It found that each percentage-point increase in the proportion of clinic patients seen by the PC–MHI providers was associated with an 11 percent increase in the average total mental health visits per year.[253] Finally, another 2019 study, which examined the effectiveness of hybrid psychiatric care, a combination of in-person and telepsychiatry services, found that hybrid care increased the total number of outpatient encounters and increased the timeliness of care in mental health patients, compared to patients with in-person visits only.[254]

1.7.1. Proposed Amendments to the Existing MHPAEA Regulations (26 CFR 54.9812–1, 29 CFR 2590.712, 45 CFR 146.136)

These proposed rules focus plans and issuers on the impact of NQTLs and associated practices on access to mental health and substance use disorder benefits. The regulations further stress the importance of avoiding NQTLs and practices that impose greater limits on access for participants, beneficiaries, and enrollees for mental health or substance use disorder benefits.

For example, as discussed in section II.A.2 of the preamble, the definition of ''substance use disorders'' must include all disorders covered under the plan or coverage that fall under any of the diagnostic categories listed in the mental, behavioral, and neurodevelopmental disorders chapter (or equivalent chapter) of the most current version of the ICD as a mental or behavioral disorder due to psychoactive substance use (or equivalent category) or that are listed in the most current version of the DSM as a Substance-Related and Addictive Disorder (or equivalent category). Plans and issuers would also be required to use reasonable methods and analysis to determine if a limitation complies with the requirements of these proposed rules. The Departments believe that the proposed amendments could cause plans and issuers to revise their policies and remove treatment limitations in response to the Departments'

[244] Lund, Crick, Kate Orkin, Marc Witte, Thandi Davies, John Walker, Johannes Haushofer, Sarah Murray, Judy Bass, Laura Murray, and Vikram Patel. ''Treating Mental Health Conditions Improves Labor Market and Other Economic Outcomes in Low and Middle-Income Countries.'' *University of Oxford, Working Paper* (2022).

[245] Andersen, Martin. ''Heterogeneity and the Effect of Mental Health Parity Mandates on the Labor Market.'' Journal of Health Economics 43 (2015).

[246] Margiotta, Caroline, Jessica Gao, So O'Neil, Divya Vohra and Kara Zivin. ''The Economic Impact of Untreated Maternal Mental Health Conditions in Texas.'' *BMC Pregnancy Childbirth* 22, 700 (2022). *https://doi.org/10.1186/s12884-022-05001-6.*

[247] Platt, Isabel, Emma Pendl-Robinson, Eric Dehus, So O'Neil, Divya Vohra, Kara Zivin, Michael Kenny and Laura Pentenrieder. ''Estimating the Costs of Untreated Perinatal Mood and Anxiety Disorders in Vermont.'' *Mathematica.* May 2023. *https://www.mathematica.org/publications/societal-costs-of-perinatal-mood-and-anxiety-disorders-in-vermont.*

[248] Witters, Dan and Sangeeta Agrawal. ''The Economic Cost of Poor Employee Mental Health'' Gallup Workplace (December 13, 2022). *https://www.gallup.com/workplace/404174/economic-cost-poor-employee-mental-health.aspx?version=print.*

[249] Lee, Donghoon, Yeonil Kim, and Beth Devine. ''Spillover Effects of Mental Health Disorders on Family Members' Health-related Quality of Life: Evidence from a US Sample.'' *Medical Decision Making* 42, no. 1 (2022): 80–93.

[250] Florence, Curtis, Feijun Luo, and Ketra Rice. ''The Economic Burden of Opioid Use Disorder and Fatal Opioid Overdose in the United States, 2017.'' *Drug and Alcohol Dependence* 218 (2021): 108350.

[251] Mulvaney-Day, Norah, Brent J. Gibbons, Shums Alikhan, and Mustafa Karakus. ''Mental Health Parity and Addiction Equity Act and the Use of Outpatient Behavioral Health services in the United States, 2005–2016.'' *American Journal of Public Health* 109, no. S3 (2019): S190–S196.

[252] Li, Xiaoxue, and Jie Ma. ''Does Mental Health Parity Encourage Mental Health Utilization Among Children and Adolescents? Evidence From The 2008 Mental Health Parity and Addiction Equity Act (MHPAEA).'' *The Journal of Behavioral Health Services & Research* 47, no. 1 (2020): 38–53.

[253] Leung, Lucinda B., Lisa V. Rubenstein, Jean Yoon, Edward P. Post, Erin Jaske, Kenneth B. Wells, and Ranak B. Trivedi. ''Veterans Health Administration Investments in Primary Care and Mental Health Integration Improved Care Access.'' *Health Affairs* 38, no. 8 (2019): 1281–1288.

[254] Hughes, M. Courtney, Jack M. Gorman, Yingqian Ren, Sana Khalid, and Carol Clayton. ''Increasing Access to Rural Mental Health Care Using Hybrid Care that Includes Telepsychiatry.'' *Journal of Rural Mental Health* 43, no. 1 (2019): 30.

clarifications and examples. For instance, a 2016 study examined how private health plans responded to the 2010 interim final regulations and found that the majority of plans had eliminated annual limits related to behavioral health treatments. The percentage of health insurance products with special annual limits on mental health treatments decreased from 28 percent in 2009 to 4 percent in 2010, and a similar decrease was observed for health insurance products with special annual limits on substance use disorder treatments (from 26 percent in 2009 to 3 percent in 2010).[255] Therefore, plans and issuers could incur costs to implement changes associated with coverage revision of plan provisions, which might result in increased costs from expanded utilization of mental health and substance use disorder services. The Departments face uncertainty in quantifying these costs as they cannot estimate the potential increase in utilization and which services might see the largest increase in utilization.

1.7.2. New Regulations (26 CFR 54.9812–2, 29 CFR 2590.712–1, 45 CFR 146.137; 45 CFR 146.180)

These proposed rules would amend the content and data, and documentation requirements for comparative analyses required by the CAA, 2021 and outline the timeframes and processes for plans and issuers to provide their comparative analyses to the Departments upon request. These proposed rules would require plans and issuers to collect and evaluate relevant data with each comparative analysis requested by the Departments for all NQTLs, including but not limited to the number and percentage of relevant claims denials and any other data required by State law or private accreditation standards, and for NQTLs related to network composition, data including, but not limited to, in-network and out-of-network utilization rates (including time and distance data, data on providers, network adequacy metrics (including time and distance data, and data on providers accepting new patients), and provider reimbursement rates (including as compared to billed charges).

Plans and issuers would incur costs associated with collecting, processing, and analyzing data under the new proposed data requirements, including data on claims denials, data relevant to NQTLs as required by State law or private accreditation standards, in-network and out-of-network utilization rates, network adequacy metrics, provider reimbursement rates and other relevant data. As discussed in section 1.5.3 of this RIA, issuers and TPAs provide key support for plan compliance with MHPAEA and would incur most of the burden given their large involvement in the plan design and NQTL analyses. The Departments request comments on whether plans, issuers, and TPAs already collect and examine this data.

To meet the proposed new content requirements for the comparative analyses, the Departments, based on internal discussion, expect that on average, plans would need to analyze 4 NQTLs and issuers would need to analyze 8 NQTLs. Plans and issuers preparing their own comparative analyses would incur an incremental burden of 10 hours per NQTL in the first year, with 2 hours for a general or operations manager to review the requirements and outline the changes needed for the comparative analyses and 8 hours for a business operations specialist to prepare the comparative analyses. In the first year, this would result in a cost burden of approximately $291.0 million.[256] The amount of time spent by plans preparing their own comparative analyses could vary depending on the level of cooperation by the TPA. Once the comparative analyses are performed and documented, plans would need to update the analyses when making changes to the terms of the plan or coverage, including changes to the way NQTLs are applied to mental health and substance use disorder benefits. In subsequent years, the Departments estimate plans would incur an incremental burden of 4 hours annually per NQTL to update the analyses, with 1 hour for a general or operations manager and 3 hours for a business operations specialist. In subsequent years, this would result in a cost burden of approximately $117.6 million.[257] The Departments seek comments on these assumptions.

Additionally, plans and issuers must make the comparative analyses and other applicable information required by the CAA, 2021 available upon request to participants and beneficiaries in plans subject to ERISA and to participants, beneficiaries, and enrollees in all non-grandfathered group health plans and non-grandfathered group or individual health insurance coverage upon request in connection with an appeal of an adverse benefit determination. The Departments estimate that on average each plan or issuer would receive one request annually and that plans and issuers would annually incur a burden of 5 minutes for a clerical worker to prepare and send the comparative analyses to each requesting participant or beneficiary. This would result in an annual cost burden of approximately $10.5 million.[258] The Departments also assume that 58.2 percent of requests would be delivered electronically, resulting in a de minimis cost.[259] The

[255] Horgan, Constance M., Dominic Hodgkin, Maureen T. Stewart, Amity Quinn, Elizabeth L. Merrick, Sharon Reif, Deborah W. Garnick, and Timothy B. Creedon. ''Health Plans' Early Response to Federal Parity Legislation for Mental Health and Addiction Services.'' *Psychiatric Services* 67, no. 2 (2016): 162–168.

[256] A labor rate of $132.38 is used for a general or operations manager and a labor rate of $109.96 is used for a business operations specialist. (*Source:* Estimates for total compensation are based on mean hourly wages by occupation from the 2021 Occupational Employment Statistics and estimates of wages and salaries as a percentage of total compensation by occupation are from the December 2021 National Compensation Survey's Employee Cost for Employee Compensation. Estimates for overhead costs for services are imputed from the 2020 Service Annual Survey. To obtain overhead cost on an occupational basis, the estimate allocates total industry overhead cost to unique occupations using a matrix of detailed occupational employment for each NAICS industry. All values are in 2023 dollars.) The labor rate is applied in the calculation as: [(27,499 ERISA self-insured group health plans × 4 NQTLs × 2 hours × $132.38 for a general or operations manager) + (27,499 ERISA self-insured group health plans × 4 NQTLs × 8 hours × $109.96 for a business operations specialist) + (1,500 issuers × 8 NQTLs × 2 hours × $132.38 for a general or operations manager) + (1,500 issuers × 8 NQTLs × 8 hours × $109.96 for a general or operations manager) + (33,076 self-funded, non-Federal governmental health plans × 4 NQTLs × 2 hours × $132.38 for a general or operations manager) + (33,076 self-funded, non-Federal governmental health plans × 4 NQTLs × 2 hours × $109.96 for a business operations specialist)] = $291,031,092.

[257] A labor rate of $132.38 is used for a general or operations manager and a labor rate of $109.96 is used for a business operations specialist. The labor rate is applied in the calculation as: [(27,499 ERISA self-insured group health plans × 4 NQTLs × 1 hour × $132.38 for a general or operations manager) + (27,499 ERISA self-insured group health plans x× 4 NQTLs × 3 hours × $109.96 for a business operations specialist) + (1,500 × 8 NQTLs × 1 hour × $132.38 for a general or operations manager) + (1,500 issuers × 8 NQTLs × 3 hours × $109.96 for a general or operations manager) + (33,076 self-funded, non-Federal governmental health plans × 4 NQTLs × 1 hours × $132.38 for a general or operations manager) + (33,076 self-funded, non-Federal governmental health plans × 4 NQTLs × 3 hours × $109.96 for a business operations specialist)] = $117,552,718.

[258] The Departments estimate that there are 476 issuers with 1,500 issuer/State combinations offering individual and group health coverage nationwide. A labor rate of $63.45 is used for a clerical worker. The labor rate is applied in the calculation as: (1,898,298 ERISA group health plans + 90,126 non-Federal governmental health plans + 1,500 issuers/State combinations providing coverage in the group and individual market) × 5 minutes × $63.45 = $10,521,787.

[259] According to data from the National Telecommunications and Information Agency (NTIA), 40.0 percent of individuals aged 25 and over have access to the internet at work. According to a Greenwald & Associates survey, 84 percent of

remaining 41.8 percent of requests would be mailed, at a cost of $1.14 each, which is postage for a 3-ounce letter. The annual cost burden to mail the comparative analyses to the participants and beneficiaries requesting them would therefore be approximately $1.6 million.[260]

In the first year, group health plans and issuers would need time to familiarize themselves with these proposed rules and amendments. The Departments assume that on average it would require six and a half hours for an attorney to review these proposed rules and amendments. This would result in a one-time cost burden of $64.3 million.[261]

According to the 2021 National Health Expenditure Data, the total contribution of private employers to health insurance premiums is $554.1 billion. The total contribution of State and local employers to health insurance premiums is $179.7 billion.[262] The total health expenditure on the individual market is $80.9 billion.[263] In the first year, the cost to comply with these proposed rules is estimated to be approximately $367.4 million,[264] which represents 0.05 percent of total premiums in these markets. In subsequent years, the cost to comply with these proposed rules is estimated to be approximately $129.6 million,[265] which represents 0.02 percent of total premiums in these markets. The Departments request comments regarding the costs associated with these proposed rules and amendments. To be most useful, comments should distinguish between the cost to comply with existing parity requirements and the cost to comply with the requirements of these proposed rules.

HHS assumes that most of the self-funded, non-Federal governmental plans that would be affected by the implementation of the CAA, 2023 provision that sunsets the MHPAEA opt-out election currently offer mental health and substance use disorder benefits, but that many of these plans might not be complying with MHPAEA. These plans would incur costs to come into compliance. In particular, some plans might have to remove limits on or offer more generous mental health and substance use disorder benefits, which would likely increase utilization of mental health and substance use disorder services, increasing the number of claims submitted, and the overall costs incurred by these plans. Plans that have opted out of requirements under MHPAEA would also need to conduct NQTL comparative analyses if they are not already doing so. HHS is unable to estimate the potential costs to these plans because the extent to which these plans are currently out of compliance is unknown, and costs associated with coming into compliance would vary from plan to plan. HHS seeks comments on the potential costs to these plans to come into compliance with MHPAEA.

HHS estimates that the implementation of the CAA, 2023 provision that sunsets the MHPAEA opt-out election would generate a total cost savings of approximately $11,351 for plans (as discussed in section 2.2 of this RIA), as these plans would no longer be required to submit an opt-out notice to the Federal Government or prepare and disseminate an opt-out notice to plan participants regarding the plan's opt-out election, as long as the plans do not elect to permissibly opt-out of other requirements. This proposed provision would also generate cost savings of approximately $2,469 for the Federal Government, as discussed in section 2.2 of this RIA, as HHS would no longer have to process the opt-out notices submitted by several of these plans.

1.8. Transfers

Improving parity in coverage of mental health and substance use disorder benefits has the potential to increase premiums, change the spending patterns of plans and issuers, and change the utilization patterns of participants, beneficiaries, and enrollees. The Departments recognize these as transfers among participants, beneficiaries, and enrollees, plans and issuers, and mental health and substance use disorder providers and facilities. Specifically, the Departments expect these proposed rules would result in: (1) transfers from plans and issuers to participants, beneficiaries, and enrollees caused by lower out-of-pocket spending; (2) transfers from participants, beneficiaries, and enrollees to plans and issuers caused by higher premiums; and (3) transfers between primary care providers and mental health providers for the treatment of mental health and substance use disorders resulting from the anticipated shift of participants, beneficiaries, and enrollees choosing to obtain treatment from a specialist instead of a primary care provider. The Departments request comment or data on how large these transfers might be.

1.8.1. Transfers From Plans and Issuers to Participants, Beneficiaries, and Enrollees Caused by Lower Out-of-Pocket Spending

These proposed rules could result in a transfer from plans and issuers to participants, beneficiaries, and enrollees through lower out-of-pocket spending for mental health and substance use disorder services. For example, a 2013 study examined the impact of the 2001 parity directive in the Federal Employees Health Benefits (FEHB) Program and found that the annual out-

plan participants find it acceptable to make electronic delivery the default option, which is used as the proxy for the number of participants who will not opt-out of electronic disclosure that are automatically enrolled (for a total of 33.6 percent receiving electronic disclosure at work). Additionally, the NTIA reports that 40.4 percent of individuals aged 25 and over have access to the internet outside of work. According to a Pew Research Center survey, 61.0 percent of internet users use online banking, which is used as the proxy for the number of internet users who will affirmatively consent to receiving electronic disclosures (for a total of 24.7 percent receiving electronic disclosure outside of work). Combining the 33.6 percent who have access to electronic disclosure at work with the 24.7 percent who have access to electronic disclosure outside of work produces a total of 58.2 percent who will receive to electronic disclosure overall.

[260] The Departments assume one request per entity and that each mailed response will cost $1.89 in materials and postage, on average. The mailing and postage cost assume $.05 per printed page, an average document length of 15 pages and $1.14 in postage for a 3-ounce parcel. Therefore, the cost is estimated as (1,488,476 fully-insured, non-grandfathered plans with less than 50 participants + 409,822 ERISA-covered group health plans with 50 or more participants + 1,500 issuers/State Combinations + 90,126 non-Federal governmental health plans) × 41.8% × ($1.14 + (15 pages × $0.05)) = $1,572,080.

[261] A labor rate of $159.34 is used for an attorney (this figure reflects the median hourly wage of lawyers according to the DOL Bureau of Labor Statistics Occupational Employment and Wage Statistics for May 2022, doubled to account for overhead costs and benefits). The reading time is calculated based on an average 250 words per minute reading rate. The labor rate is applied in the calculation as: (27,499 self-funded, ERISA group health plans + 33,076 self-funded, non-Federal governmental health plans + 1,500 issuers/State combinations providing coverage in the group and individual market) × 6.5 hours × $159.34 = $64,291,778.

[262] Centers for Medicare and Medicaid Services. ''National Health Expenditure Data.'' NHE Tables—Table 24. *https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/nationalhealthaccountshistorical.*

[263] Centers for Medicare and Medicaid Services. ''National Health Expenditure Data.'' NHE Tables—Table 21. *https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/nationalhealthaccountshistorical.*

[264] The cost is estimated as follows: $291.0 million for preparing the comparative analyses + $64.3 million for reviewing the proposed rules and amendments + $10.5 million to prepare the comparative analyses upon request to participants and beneficiaries + $1.6 million to distribute the comparative analyses to participants and beneficiaries = $367.4 million.

[265] The cost is estimated as follows: $117.6 million for preparing the comparative analyses + $10.5 million for preparing the comparative analyses upon request to participants and beneficiaries + $1.6 million to distribute the comparative analyses to participants and beneficiaries = $129.6 million.

of-pocket spending for FEHB enrollees diagnosed with bipolar disorder, major depression, or adjustment disorder decreased by between $78 and $86.[266] Furthermore, a 2018 study compared commercially-insured children ages 3 to 18 years in 2008 who were continuously enrolled in plans newly subject to parity under MHPAEA to children continuously enrolled in plans never subject to MHPAEA. The 2018 study found that children with mental health conditions who were enrolled in plans subject to parity had, on average, $140 lower annual out-of-pocket mental health spending than expected compared to the comparison group. The study further found that children in or above the 85th percentile in total mental health spending who were enrolled in plans subject to MHPAEA had, on average, $234 lower annual out-of-pocket mental health spending than those in the comparison group.[267] Finally, a 2019 study examined the impact of MHPAEA on mental health services spending in a commercially-insured population diagnosed with mental health disorders and found that MHPAEA resulted in a decrease in the mean out-of-pocket spending per mental health outpatient visit.[268]

1.8.2. Transfers From Participants, Beneficiaries, and Enrollees to Plans and Issuers Caused by Higher Premiums

These proposed rules might also result in a transfer from participants, beneficiaries, and enrollees to plans and issuers in the form of higher premiums. By limiting the ability of plans and issuers to avoid costs of certain mental health and substance use disorder treatments, while increasing access to and utilization of these services, plans and issuers might increase premiums and change cost-sharing requirements (for example, by raising deductibles) to offset these costs. Similarly, by incorporating the statutory requirement that NQTLs be no more restrictive for mental health and substance use disorder benefits than for medical/surgical benefits, plans and issuers might reduce the number of NQTLs employed and increase premiums in order to offset the costs of participants utilizing more mental health and substance disorder benefits.

Many studies attempt to isolate the changes in health costs associated with implementing parity. For example, in 2007 the Congressional Budget Office estimated that MHPAEA would increase premiums for group health insurance by 0.4 percent on average.[269] Another study by the Society of Actuaries on mental health parity found in 2005 that, ''overall health care costs increased minimally and in some cases were even reduced.'' [270] The Departments anticipate that these proposed rules would have a minimal impact on premiums, but there may be instances in which plans and issuers may impose higher premiums. The Departments request comments or data on this transfer.

1.8.3. Transfers Between Primary Care Providers and Mental Health Providers

Finally, these proposed rules may result in a transfer from primary care providers to mental health and substance use disorder providers. More specifically, patients may be more likely to visit a mental health or substance use disorder specialist compared to a primary care provider, as these proposed rules clarify the manner in which plans and issuers must provide parity in coverage for mental health and substance use disorder benefits and medical/surgical benefits. A 2012 study that examined the impact of Oregon's 2007 parity law on the choice of provider found that the law was associated with a slight increase in the likelihood of patients seeking care with masters-level specialists, and relatively little change for generalist physicians, psychiatrists, and psychologists. The findings suggest that these proposed rules may lead to a slight shift in the use of nonphysician specialists, including masters-level specialists, and away from generalist physicians.[271]

1.8.4. Transfers Associated With the Implementation of the CAA, 2023 Provision That Sunsets the MHPAEA Opt-Out Election for Self-Funded, Non-Federal Governmental Plans

HHS anticipates that the proposed amendments to implement the CAA, 2023 provision that sunsets the MHPAEA opt-out election for self-funded, non-Federal governmental plans would have similar effects as the other provisions examined in this subsection of the RIA. These proposed amendments might lead to improved coverage of and lower cost-sharing requirements for mental health and substance use disorder benefits for participants and beneficiaries of self-funded, non-Federal governmental plans. This would lead to lower out-of-pocket costs for plan participants and beneficiaries who receive mental health or substance use disorder services. This would be viewed as a transfer from self-funded, non-Federal governmental plans to participants and beneficiaries.

On the other hand, as noted in section 1.7 of this RIA, if the proposed amendments cause plans to remove limits on or offer more generous mental health and substance use disorder benefits, utilization of mental health and substance use disorder services might increase, which may result in the number of claims submitted and the overall costs incurred by plans to also increase. This, in turn, might lead to higher premiums and/or deductibles for plan participants, which may seem to be a transfer from plan participants to self-funded, non-Federal governmental plans, but is instead an indication of who bears the societal cost presented in section 1.7.

1.9. Uncertainty

It is unclear what percentage of participants, beneficiaries, and enrollees experience more restrictive NQTLs and more stringent practices related to the design and implementation of mental health and substance use disorder benefits, as compared to medical/surgical benefits. Similarly, it is unclear what percentage of plans and issuers impose greater limitations on mental health and substance use disorder benefits than on medical/surgical benefits. This frequency may differ among small and large plans and issuers. Examining some plans' comparative analyses shows that they are not in full compliance with MHPAEA's requirements for NQTL's although the extent across all plans is not known. As documented in the 2022 MHPAEA Report to Congress, DOL completed a compliance review of 48

[266] Busch, Alisa B., Frank Yoon, Colleen L. Barry, Vanessa Azzone, Sharon-Lise T. Normand, Howard H. Goldman, and Haiden A. Huskamp. ''The Effects of Parity on Mental Health and Substance Use Disorder Spending and Utilization: Does Diagnosis Matter?'' The American Journal of Psychiatry 170, no. 2 (2013): 180.

[267] Kennedy-Hendricks, Alene, Andrew J. Epstein, Elizabeth A. Stuart, Rebecca L. Haffajee, Emma E. McGinty, Alisa B. Busch, Haiden A. Huskamp, and Colleen L. Barry. ''Federal Parity and Spending for Mental Illness.'' *Pediatrics* 142, no. 2 (2018).

[268] Haffajee, Rebecca L., Michelle M. Mello, Fang Zhang, Alisa B. Busch, Alan M. Zaslavsky, and J. Frank Wharam. ''Association Of Federal Mental Health Parity Legislation with Health Care Use and Spending Among High Utilizers of Service.'' *Medical Care 57*, no. 4 (2019): 245.

[269] Congressional Budget Office. Congressional Budget Office Cost Estimate: S558. March 20, 2007. *https://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/78xx/doc7894/s558.pdf.*

[270] Melek, Steve. ''The Cost of Mental Health Parity.'' Health Section News. Issue 49. (2005) As presented to the Society of Actuaries. *https://www.soa.org/globalassets/assets/library/newsletters/health-section-news/2005/march/hsn-2005-iss49-melek-b.pdf.*

[271] McConnell, K. John, Samuel HN Gast, and Bentson H. McFarland. ''The Effect of Comprehensive Behavioral Health Parity on Choice of Provider.'' *Medical Care* 50, no. 6 (2012): 527.

NQTLs (36 unique NQTLs), corresponding to 30 plans and issuers as of October 31, 2021. All of these reviews resulted in an initial determination of noncompliance with MHPAEA.[272]

While the Departments expect that these proposed rules would result in plans and issuers expanding coverage of mental health and substance use benefits, it is possible that instead of relaxing the use of NQTLs on mental health and substance use disorder benefits, some plans and issuers may impose additional NQTLs on medical/surgical benefits. As a result, some types of medical/surgical benefits may become less accessible for some participants, beneficiaries, and enrollees, which could lead to an increase in out-of-pocket costs.

There is also a possibility that some plans and issuers would stop offering mental health and substance use disorder benefits. In 2010, 2 percent of employers reported discontinuing their coverage of mental health and substance use disorder treatments.[273] Nevertheless, as discussed in section 1.6 of this RIA, the Departments anticipate that these proposed rules would expand the level of coverage for mental health and substance use disorder benefits, which would result in reduced out-of-pocket spending for plan participants, beneficiaries, and enrollees. The Departments face uncertainty in estimating the magnitude of savings and welcome any comments and data that can help estimate the amount of decrease in out-of-pocket spending. The Departments also invite comments and data related to other issues identified in this section.

Further, there may be some possible societal spillover effects which may occur as a result of these proposed rules. For example, increasing access to mental health and substance use disorder services may improve public safety in the long-term. A 2017 study on whether State parity laws for substance use disorder treatments was associated with reduced fatal traffic accidents found that passage of State parity laws was associated with reduced annual total traffic fatality rates by 4.1 to 5.4 percent.[274] In addition, a 2021 study which examined the impact of State parity laws on crime between 1994 and 2010 found that the passage of State parity laws was associated with a reduction of violent crimes by 5 to 7 percent and that the resulting lower crime rates were associated with an annual savings of $3 billion.[275] These studies may suggest that the benefits of these proposed rules may go beyond the listed benefits discussed in this RIA.

HHS is unable to precisely forecast how many participants and beneficiaries would be affected by the proposed amendments to implement the CAA, 2023 provision that sunsets the MHPAEA opt-out election for self-funded, non-Federal governmental plans, as plan sponsors that have elected to opt out of requirements under MHPAEA were not required to report that information to HHS as part of their HIPAA opt-out filings.

It is possible that some self-funded, non-Federal governmental plans would stop offering mental health and substance use disorder benefits in response to the proposed amendments. However, HHS is unable to estimate the potential number of self-funded, non-Federal governmental plans that might do so. It is also possible that some self-funded, non-Federal governmental plans might increase the financial requirements and treatment limitations that apply to medical/surgical benefits in response to this proposed provision, to ensure that these financial requirements and treatment limitations are comparable to those for mental health and substance use disorder benefits. HHS anticipates that this is a less likely outcome of these proposed amendments.

HHS seeks comments on the potential number of self-funded, non-Federal governmental plans that might stop offering mental health and substance use disorder benefits, as well as the potential number of self-funded, non-Federal governmental plans that might increase financial requirements and treatment limitations for medical/surgical benefits in response to the proposed amendments. HHS also seeks comments on the potential number of participants and beneficiaries that might be affected by these potential plan changes.

1.10. Alternatives

In addition to the regulatory approach outlined in these proposed rules, the Departments considered alternatives when developing policy regarding the implementation of MHPAEA. The Departments considered not expressly incorporating the statutory requirement that NQTLs be no more restrictive for mental health and substance use disorder benefits than for medical/surgical benefits. However, as described in section I.E of this preamble, it is clear that plans and issuers too often fail to consider the impact of their NQTLs on access to mental health and substance use disorder benefits, consistent with MHPAEA's fundamental purpose. While the Departments have seen some promising results in response to their reviews of plans' and issuers' comparative analyses under the CAA, 2021's requirements, they have also seen a great deal of confusion about the application of the current regulation to NQTLs and about the parity obligation generally. Based on the Departments' experience with plans' and issuers' attempts to comply with the existing regulations and guidance and the CAA, 2021, they have concluded that the existing MHPAEA regulations failed to sufficiently focus attention on the obligation to ensure that NQTLs, and associated processes, strategies, factors, and evidentiary standards, avoid placing disparate burdens on participants', beneficiaries', and enrollees' access to covered mental health and substance use disorder treatment. Accordingly, the Departments believe that the proposed amendments would be beneficial to participants, beneficiaries, and enrollees, as plans and issuers revise their policies and remove or amend NQTLs that are inconsistent with MHPAEA.

The Departments also considered not requiring plans and issuers to use specific data elements in preparing their comparative analyses or to provide the data to the Departments upon request. However, during their review of comparative analyses as part of their reporting requirements to Congress, the Departments found that many plans and issuers did not initially provide sufficient information to demonstrate compliance of an NQTL either by design, application, or both. It is often difficult, to assess compliance in operation without such data. By requiring the consideration, use, and production of this data, the regulation should result in improved review of plans' and issuers' policies and processes, and improved parity

[272] 2022 MHPAEA Report to Congress, available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2022-realizing-parity-reducing-stigma-and-raising-awareness.pdf.*

[273] Government Accountability Office. ''Mental Health and Substance Use: Employers' Insurance Coverage Maintained or Enhanced Since Parity Act, but Effect of Coverage on Enrollees Varied,'' GAO–12–63, November 2011.

[274] Popovici, Ioana, Johanna Catherine Maclean, and Michael T. French (2017). ''The Effects of Health Insurance Parity Laws for Substance Use Disorder Treatment on Traffic Fatalities: Evidence of Unintended Benefits.'' National Bureau of Economic Research. *https://www.nber.org/system/files/working_papers/w23388/revisions/w23388.rev0.pdf?sy=388.*

[275] Sharma, Keshob. ''Do Mental Health Parity Laws Reduce Crime?'' (2021).

outcomes for participants, beneficiaries, and enrollees.

1.11. Conclusion

The Departments expect that these proposed rules, if finalized, would provide plans and issuers with a better understanding of the requirements of MHPAEA and improve how they measure, analyze, document, and demonstrate parity with regard to NQTLs. The Departments are of the view that these proposed rules and corresponding associated Technical Release, if finalized, would help plans and issuers produce NQTL comparative analyses that meet the requirements of the CAA, 2021, resulting in improved access to and coverage of mental health and substance use disorder treatments, which should ultimately result in better mental health outcomes.

2. Paperwork Reduction Act

2.1. Paperwork Reduction Act—Departments of Labor and the Treasury

As part of their continuing effort to reduce paperwork and respondent burden, the Departments conduct a preclearance consultation program to allow the general public and Federal agencies to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA).[276] This helps to ensure that the public understands the Departments' 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 Departments can properly assess the impact of collection requirements on respondents.

Currently, the Departments are soliciting comments concerning the proposed information collection request (ICR) included in the MHPAEA Notices. To obtain a copy of the ICR, contact the PRA addressee shown below or go to *https://www.RegInfo.gov.*

The Departments have submitted a copy of these proposed rules to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Departments and OMB are particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronically delivered responses).

Commenters may send their views on the Department's PRA analysis in the same way they send comments in response to these proposed rules (for example, through the *www.regulations.gov* website), including as part of a comment responding to the broader NPRM.

PRA Addressee: Address requests for copies of the ICR to James Butikofer, Office of Research and Analysis, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N–5718, Washington, DC 20210; *ebsa.opr@dol.gov* (*https://www.reginfo.gov/public/do/PRAMain*).

Readers should note that the PRA requires a non-incremental analysis of information collections, and hence the overall summary of the paperwork burden estimates in this section includes the entire on-going burden imposed by information collections required by MHPAEA, the CAA, and subsequent guidance. The incremental hour and cost burdens of these proposed rules are discussed in detail below. For a full discussion of all burden related to this information collection please see the supporting statement which is part of the ICR available at *https://www.reginfo.gov/public/do/PRAMain.*

2.1.1. Amendment to Existing MHPAEA Regulations (29 CFR 2590.712; 26 CFR 54.9812–1)

The proposed amendments to the existing MHPAEA regulations would add new definitions, amend existing definitions, specify new requirements related to NQTLs, amend existing examples of NQTLs, and add new examples of NQTLs, providing clarity to interested parties. The proposed amendments would also specify that mental health and substance use disorder definitions must be consistent with generally recognized independent standards of current medical practice and would add more specificity as to what conditions or disorders plans and issuers would be required to treat as mental health and substance use conditions or disorders.

2.1.2. New Regulation (29 CFR 2590.712–1; 26 CFR 54.9812–2)

These proposed rules set more specific content and data requirements for the NQTL comparative analyses required by MHPAEA as amended by the CAA, 2021, clarify when the comparative analyses need to be performed, and outline the timeframes and process for plans and issuers to provide their comparative analyses to the Departments or applicable State authority upon request. These proposed rules would also require plans and issuers to collect and evaluate relevant data as part of each comparative analysis, including but not limited to claims denials, data relevant to NQTLs as required by State law or private accreditation standards, utilization rates, network adequacy metrics, and provider reimbursement rates, in fulfillment of the existing requirement that they evaluate and document their evaluation as part of the analysis of the application of NQTLs related to network composition and provider reimbursement.

For the purpose of this analysis, it is assumed that health insurance issuers would fulfill the data request for fully insured group health plans. This burden is accounted for under HHS' OMB Control number 0938–1393 and is discussed later in this document. It is also assumed that TPAs and other service providers would fulfill the requirements for the vast majority of self-insured group health plans.

2.1.3. Burden Estimates for Both Existing Requirements and Proposed Requirements

The Departments estimate that there are approximately 250,000 ERISA self-insured group health plans with 50 or more participants that are affected by these proposed rules.[277] The Departments believe that the number of self-insured group health plans that actually perform the analysis themselves and incur the full estimated compliance costs may be much smaller. The Departments analyzed 2020 Form 5500 Schedule C (Service Provider

[276] 44 U.S.C. 3506(c)(2)(A) (1995).

[277] MHPAEA only applies to ERISA plans in the group market with 50 or more participants that offer mental health or substance use disorder (MH/SUD) benefits. The Departments have not identified what share of plans with 50 or more participants offer MH/SUD benefits and has therefore assumed that all of these plans offer them. Based on the 2021 Medical Expenditure Survey, 61 percent of ERISA-covered group health plans with 50 or more participants are self-insuring. Thus, the Department calculates the number of ERISA self-insured group health plans with 50 or more participants based on the following manner: 409,822 ERISA group health plans with 50 or more participants × 61% = 249,991.

Information) filings of self-insured health plans and determined that 89 percent of those plans indicated that they contracted with a TPA.[278] Self-insured group health plans could fulfill the requirements with the help of TPAs and other service providers.

To the extent self-insured plans use plan designs provided by TPAs or service providers responsible for nearly identical fully insured plans, those TPAs or service providers could utilize the analysis already performed for those fully insured plans, while helping these self-insured plans comply with the requirements. The Departments assume that most self-insured health plans would utilize service providers to perform the analysis and that only 11 percent[279] (27,499) of the affected self-insured group health plans, primarily the largest, would need to conduct the analyses themselves for their plan specific design.[280] The Departments request comments on the percent of self-insured group health plans that would rely on analyses that TPAs and other service providers have already performed for their other plans, thus reducing estimated burden on plans.

The Departments expect that even these numbers may overestimate the number of self-insured plans that would perform the analysis themselves, without assistance from TPAs or service providers. For example, in DOL's review of comparative analyses, which has focused on self-funded plans, the reliance on insurance companies, TPAs, and other service providers for much or all of the work has been nearly universal. As noted above, this is not surprising because of the outsized role insurance companies, TPAs and other service providers tend to play in designing the plans, administering the networks, managing claims, providing plan services, maintaining and holding the data relevant to the comparative analyses, and driving MHPAEA compliance or noncompliance.

Non-grandfathered, fully insured ERISA plans with less than 50 participants that are subject to MHPAEA under the Essential Health Benefits (EHB) requirements of the Affordable Care Act are likely to have their issuers prepare their comparative analyses. Issuers can take advantage of economies of scale by preparing the required documents for those plans purchasing coverage. HHS has jurisdiction over issuers and therefore is accounting for this portion of the burden in their analysis, in addition to the burden related to non-Federal governmental plans. Accordingly, this analysis considers only the burden associated with ERISA self-insured group health plans, which are under the jurisdiction of the DOL and Treasury.

These proposed rules require that group health plans offering group health insurance coverage must make a comparative analysis available upon request by DOL. The CAA, 2021 requires DOL to collect no fewer than 20 comparative analyses per year, but it also provides that DOL shall request that a group health plan or issuer submit the comparative analyses for plans that involve potential MHPAEA violations or complaints regarding noncompliance with MHPAEA that concern NQTLs, and any other instances in which the DOL determines appropriate. Based on its prior experience and current funding, DOL expects to request 100 comparative analyses each year.[281] To provide DOL with their comparative analyses and associated documentation, DOL estimates, based on internal discussion, it would take a total of five hours for plans, with one hour for a general or operations manager and four hours for a business operations specialist. This would result in a total hour burden of 500 hours with an equivalent cost burden of $57,222 in each year.[282]

These proposed rules require that a plan or issuer document the action that has been or is being taken by the plan or issuer to mitigate any material differences in access to mental health and substance use disorder benefits as compared to medical/surgical benefits, as required in the demonstration of comparability and stringency in operation requirement in § 2590.712–1(c)(5)(iv) of these proposed rules. To meet the format, content, data, and documentation requirements for the comparative analysis, DOL expects that plans preparing their own comparative analyses would on average annually perform four NQTL analyses across benefit classifications, based on DOL's experience in reviewing comparative analyses, and assumes that each NQTL analysis would require 20 hours in the first year, with 4 hours for a general or operations manager and 16 hours for a business operations specialist.[283] In the first year, this results in a total hour burden of 2,199,921 hours with an equivalent cost burden of $251,767,736.[284] Once the comparative analyses are performed or documented, plans would need to update the analyses when making changes to the terms of the plan or coverage, including changes to the way NQTLs are applied to mental health and substance use disorder benefits. In subsequent years,

[278] Because many plans are exempt from filing a Form 5500, the Department only identified 37,934 self-insured health plan filings for 2020. Of these, only 5,537 plans (or roughly 15 percent) attached a Schedule C. Of those plans, 4,920 (or roughly 89 percent) indicated they paid compensation, either directly or indirectly, of at least $5,000 for either claims processing, contract administration, or both.

[279] Based on the 2020 Form 5500, 89 percent of self-insured plans filed a Schedule C and indicated using either a Claims Processor, Contract Administrator, or both.

[280] The Departments assume only large plans, defined as a plan with 50 or more participants would self-administer. 249,991 self-funded ERISA plans with 50 or more participants × 11 percent of plans that self-administer = 27,499.

[281] It should be emphasized, however, that DOL currently relies on supplemental appropriations passed as part of CAA, 2021, to fund these enforcement efforts. The supplemental appropriations are currently scheduled to expire at the end of FY 2024 with the consequence that DOL would lose funds for between a quarter and a third of its enforcement program and EBSA would have to commensurately reduce its staff size by approximately 120 full-time employees (FTEs). As a result, its MHPAEA enforcement efforts would necessarily decline, and the estimates of associated expenses would correspondingly decline.

[282] The burden is calculated as follows: (100 ERISA self-insured group health plans × 1 hour for a general or operations manager) + (100 ERISA self-insured group health plans × 4 hours for a business operations specialist) = 500 hours. A labor rate of $132.38 is used for a general or operations manager and a labor rate of $109.96 is used for a business operations specialist. The labor rate is applied in the calculation as: (100 ERISA self-insured group health plans × 1 hour for a general or operations manager × $132.38) + (100 ERISA self-insured group health plans × 4 hours for a business operations specialist × $109.96) = $57,222

[283] The estimated hour burden is consistent with the hour burden estimated in the previous PRA supporting statement for 1210–0138. In the PRA supporting statement, the Departments estimated that it would take a total of 20 hours for plans to update each comparative analysis as required by the CAA, 2021 (*https://omb.report/icr/202108-1210-015/doc/114767500*). This estimate differs by accounting for plans needing to evaluate multiple NQTLs.

[284] The burden is calculated as follows: (27,499 ERISA self-insured group health plans × 4 NQTLs × 4 hours for a general or operations manager) + (27,499 ERISA self-insured group health plans × 4 NQTLs × 16 hours for a business operations specialist) = 2,199,921 hours. A labor rate of $132.38 is used for a general or operations manager and a labor rate of $109.96 is used for a business operations specialist. The labor rate is applied in the calculation as: (27,499 ERISA self-insured group health plans × 4 NQTLs × 4 hours for a general or operations manager × $132.38) + (27,499 ERISA self-insured group health plans × 4 NQTLs × 16 hours for a business operations specialist × $109.96) = $251,767,736. DOL estimates of labor costs by occupation reflect estimates of total compensation and overhead costs. Estimates for total compensation are based on mean hourly wages by occupation from the 2021 Occupational Employment Statistics and estimates of wages and salaries as a percentage of total compensation by occupation from the December 2021 National Compensation Survey's Employee Cost for Employee Compensation. Estimates for overhead costs for services are imputed from the 2020 Service Annual Survey. To obtain overhead cost on an occupational basis, the estimate allocates total industry overhead cost to unique occupations using a matrix of detailed occupational employment for each NAICS industry. All values are in 2023 dollars.

DOL estimates it would take a total of 10 hours annually per NQTL to update the analyses, with 2 hours for a general or operations manager and 8 hours for a business operations specialist. In subsequent years, this results in a total hour burden of 1,099,960 hours with an equivalent cost burden of $125,883,822.[285]

These proposed rules would also require plans and issuers to make the comparative analyses and other applicable information required by the CAA, 2021 available upon request to participants and beneficiaries in plans subject to ERISA and to participants, beneficiaries, and enrollees in all non-grandfathered group health plans and non-grandfathered group or individual health insurance coverage upon request in connection with an appeal of an adverse benefit determination. The Departments estimate that each plan would l receive one request per covered health plan annually and that plans would annually incur a burden of five minutes for a clerical worker to prepare and send the comparative analyses to each requesting participant or beneficiary. This results in an hour burden of 158,192 hours with an equivalent cost of $10,037,282.[286] DOL also assumes that 58.2 percent of requests would be delivered electronically, resulting in a de minimis cost.[287] The remaining 41.8 percent of requests would be mailed, the cost of postage for a 3-ounce letter is $1.14. The annual cost burden to mail the comparative analyses to the participants and beneficiaries is $1,499,693.[288]

2.1.4. Recordkeeping Requirement

The Departments posit that plans and issuers already maintain records as part of their regular business practices. Further, ERISA section 107 includes a general six-year retention requirement. For these reasons the Departments estimate a minimal additional burden. The Departments estimate that, on average, any additional recordkeeping requirements would take clerical personnel five minutes annually. This results in an hour burden of 158,192 hours with an equivalent cost of $10,037,282.[289]

2.1.5. Overall Summary

In summary, the total burden, including that associated with prior requirements and by these proposed rules, has a three-year average hour burden of 1,883,110 hours with an equivalent cost of 205,897,135 and a cost burden of $2,182,094.

A summary of paperwork burden estimates follows:

Type of Review: Revision.

Agency: Employee Benefits Security Administration, U.S. Department of Labor; Internal Revenue Service, U.S. Department of the Treasury.

Title: MHPAEA Notices.

OMB Control Number: 1210–0138.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Estimated Number of Respondents: 2,646,306.

Estimated Number of Annual Responses: 2,646,306.

Frequency of Response: Annual.

Estimated Total Annual Burden Hours: 1,883,110 (941,555 for DOL, 941,555 for Treasury).

Estimated Total Annual Burden Cost: $2,182,094 ($1,091,047 for DOL, $1,091,047 for Treasury).

2.2. Paperwork Reduction Act—Department of HHS

As part of its continuing effort to reduce paperwork and respondent burden, HHS conducts a preclearance consultation program to allow the general public and Federal agencies to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA).[290] This helps to ensure that the public understands HHS'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 HHS can properly assess the impact of collection requirements on respondents.

Currently, HHS is soliciting comments concerning the proposed (revised) information collection request (ICR) included in the Non-Quantitative Treatment Limitation Analyses and Compliance Under MHPAEA and the proposed (revised) ICR included in the Compliance with Individual and Group Market Reforms under title XXVII of the Public Health Service Act. To obtain a copy of either ICR, contact the PRA addressee shown below or go to *https://www.RegInfo.gov.*

HHS has submitted a copy of these proposed rules to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. HHS and OMB are particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

[285] The burden is calculated as follows: (27,499 ERISA self-insured group health plans × 4 NQTLs × 2 hours for a general or operations manager) + (27,499 ERISA self-insured group health plans × 4 NQTLs × 8 hours for a business operations specialist) = 1,099,960 hours. A labor rate of $132.38 is used for a general or operations manager and a labor rate of $109.96 is used for a business operations specialist. The labor rate is applied in the calculation as: (27,499 ERISA self-insured group health plans × 4 NQTLs × 2 hours for a general or operations manager × $132.38) + (27,499 ERISA self-insured group health plans × 4 NQTLs × 8 hours for a business operations specialist × $109.96) = $125,883,822.

[286] The hour burden is estimated as: (1,488,476 fully-insured, non-grandfathered plans with less than 50 participants + 409,822 ERISA-covered group health plans with 50 or more participants) × 5 minutes = 158,192 hours. A labor rate of $63.45 is used for a clerical worker. The labor rate is applied in the calculation as: (1,488,476 fully-insured, non-grandfathered plans with less than 50 participants + 409,822 ERISA-covered group health plans with 50 or more participants) × 5 minutes × $63.45 = $10,037,282.

[287] According to data from the National Telecommunications and Information Agency (NTIA), 40.0 percent of individuals age 25 and over have access to the internet at work. According to a Greenwald & Associates survey, 84 percent of plan participants find it acceptable to make electronic delivery the default option, which is used as the proxy for the number of participants who will not opt out of electronic disclosure that are automatically enrolled (for a total of 33.6 percent receiving electronic disclosure at work). Additionally, the NTIA reports that 40.4 percent of individuals age 25 and over have access to the internet outside of work. According to a Pew Research Center survey, 61.0 percent of internet users use online banking, which is used as the proxy for the number of internet users who will affirmatively consent to receiving electronic disclosures (for a total of 24.7 percent receiving electronic disclosure outside of work). Combining the 33.6 percent who receive electronic disclosure at work with the 24.7 percent who receive electronic disclosure outside of work produces a total of 58.2 percent who will receive electronic disclosure overall.

[288] The Departments assume one request per entity and that each mailed response will cost $1.89 in materials and postage, on average. The mailing and postage cost assume $.05 per printed page, an average document length of 15 pages and $1.14 in postage for a 3-ounce parcel. Therefore, the cost burden is calculated as follows: (1,488,476 fully-insured, non-grandfathered plans with less than 50 participants + 409,822 ERISA-covered group health plans with 50 or more participants) × 41.8% × ($1.14 + (15 pages × $0.05)) = $1,499,693.

[289] The hour burden is estimated as: (1,488,476 fully-insured, non-grandfathered plans with less than 50 participants + 409,822 ERISA-covered group health plans with 50 or more participants) × 5 minutes = 158,192 hours. A labor rate of $63.45 is used for a clerical worker. The labor rate is applied in the calculation as: (1,488,476 fully-insured, non-grandfathered plans with less than 50 participants + 409,822 ERISA-covered group health plans with 50 or more participants) × 5 minutes × $63.45 = $10,037,282.

[290] 44 U.S.C. 3506(c)(2)(A) (1995).

electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronically delivered responses).

Commenters may send their views on HHS PRA analysis in the same way they send comments in response to the NPRM as a whole (*e.g.,* through the *www.regulations.gov* website), including as part of a comment responding to the broader NPRM.

To obtain copies of the supporting statement and any related forms for the proposed collections, please visit CMS's website at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

2.2.1. Amendments to Existing MHPAEA Regulations (45 CFR 146.136)

The proposed amendments to the existing MHPAEA regulations would add new definitions, amend existing definitions, clarify the rules for NQTLs, amend existing examples of NQTLs, and add new examples of NQTLs, providing clarity to the regulated community. The proposed amendments would also clarify that mental health and substance use disorder definitions must be consistent with generally recognized standards of care and would add more specificity as to what conditions or disorders plans and issuers would be required to treat as mental health conditions and substance use disorders.

2.2.2. New Regulations (45 CFR 146.137)

These proposed rules set forth content and data requirements for the NQTL comparative analyses required by MHPAEA as amended by the CAA, 2021, clarify when the comparative analyses need to be performed, and outline the timeframes and process for plans and issuers to provide their comparative analyses to the Departments or an applicable State authority upon request. These proposed rules would also require plans and issuers to collect and evaluate relevant data as part of each comparative analysis, including but not limited to claims denials, data relevant to NQTLs as required by State law or private accreditation standards, utilization rates, network adequacy metrics, and provider reimbursement rates, in fulfillment of the existing requirement that they evaluate and document their evaluation as part of the analysis of the application of NQTLs related to network composition and provider reimbursement. As discussed above, HHS enforces applicable provisions of Title XXVII of the PHS Act, including the provisions added by MHPAEA, with respect to health insurance issuers offering group and individual health insurance coverage in States that elect not to enforce or fail to substantially enforce MHPAEA or another PHS Act provision and therefore HHS is accounting for this portion of the burden in their analysis, in addition to accounting for the burden on sponsors of non-Federal governmental plans.

2.2.3. Burden Estimates for Both Existing Requirements and Proposed Requirements

Issuers offering individual or group health insurance coverage usually have multiple products offered in multiple States. HHS estimates a total of 476 issuers offering individual and group health coverage nationwide, with 1,500 issuer/State combinations offering coverage in multiple States.

These proposed rules require that health insurance issuers offering group health insurance coverage make their comparative analyses available upon request by HHS. The CAA, 2021 requires HHS to collect not fewer than 20 comparative analyses per year, but it also provides that HHS shall request that a group health plan or issuer submit the comparative analyses for plans that involve potential MHPAEA violations or complaints regarding noncompliance with MHPAEA that concern NQTLs, and any other instances in which HHS determines appropriate. Thus, HHS expects to request at least 20 comparative analyses each year. HHS estimates that to provide the comparative analyses and associated documentation, it would take a total of 5 hours for each plan or issuer, with 1 hour for a general or operations manager and 4 hours for a business operations specialist. This would result in a total hour burden of 100 hours with an equivalent cost burden of $11,444 in each year.[291] HHS seeks comment on the average number of NQTLs for plans offered by non-Federal governmental plans and issuers.

These proposed rules would require that issuers document the action that has been or is being taken by the issuer to mitigate any material differences in access to mental health and substance use disorder benefits as compared to medical/surgical benefits, as required by 45 CFR 146.137(c)(5)(iv). To meet the proposed new content and data, and documentation requirements for the comparative analyses, HHS expects that each issuer will on average annually perform 8 NQTL comparative analyses, based on the Departments' experience in reviewing comparative analyses, and assumes that each NQTL comparative analysis would require 20 hours in the first year, with 4 hours for a general or operations manager and 16 hours for a business operations specialist. In the first year, this would result in a total hour burden of 240,000 hours with an equivalent cost burden of $27,466,560.[292] Once the comparative analyses are performed or documented, issuers would need to update the analyses when making changes to the terms of the plan or coverage, including changes to the way NQTLs are applied to mental health and substance use disorder benefits. In subsequent years, HHS estimates it would take a total of 10 hours annually to update the analyses, with 2 hours for a general or operations manager and 8 hours for a business operations specialist. In subsequent years, this would result in a total hour burden of 120,000 hours with an equivalent cost burden of $13,733,280.[293]

Sponsors of self-funded, non-Federal governmental plans are responsible for performing and documenting their NQTL comparative analyses. HHS estimates that there are 33,076 self-funded, non-Federal governmental health plans.[294] To meet the proposed

[291] The burden is calculated as follows: (20 plans and issuers × 1 hour for a general or operations manager) + (20 plans and issuers × 4 hours for a business operations specialist) = 100 hours. A labor rate of $132.38 is used for a general or operations manager and a labor rate of $109.96 is used for a business operations specialist. The labor rate is applied in the calculation as: (20 plans and issuers × 1 hour for a general or operations manager × $132.38) + (20 plans and issuers × 4 hours for a business operations specialist × $109.96) = $11,444.

[292] The burden is estimated as follows: (1,500 issuers × 8 NQTLs × 4 hours for a general or operations manager) + (1,500 issuers × 8 NQTLs × 16 hours for a business operations specialist) = 240,000 hours. A labor rate of $132.38 is used for general or operations manager and a labor rate of $109.96 is used for a business operations specialist. The labor rates are applied in the calculation as: (1,500 issuers × 8 NQTLs × 4 hours for a general or operations manager × $132.38) + (1,500 issuers × 8 NQTLs × 16 hours for a business operations specialist × $109.96) = $27,466,560.

[293] The burden is estimated as follows: (1,500 issuers × 8 NQTLs × 2 hours for a general or operations manager) + (1,500 issuers × 8 NQTLs × 8 hours for a business operations specialist) = 120,000 hours. A labor rate of $132.38 is used for general or operations manager and a labor rate of $109.96 is used for a business operations specialist. The labor rates are applied in the calculation as: (1,500 issuers × 8 NQTLs × 2 hours for a general or operations manager × $132.38) + (1,500 issuers × 8 NQTLs × 2 hours for a business operations specialist × $109.96) = $13,733,280.

[294] Based on the 2017 Census of Governments, there are 90,126 non-Federal governmental health plans. Based on the 2021 Medical Expenditure Panel Survey, the Department estimates that 36.7 percent of non-Federal governmental health plans are self-funded. Thus, 90,126 plans × 36.7 percent = 33,076 self-funded, non-Federal governmental health plans.

new, content, data, and documentation requirements for NQTL comparative analyses, HHS expects that each plan sponsor would on average annually perform 4 NQTL analyses and assumes that each NQTL comparative analysis would require a total of 20 hours in the first year, with 4 hours for a general or operations manager and 16 hours for a business operations specialist. In the first year, this would result in a total hour burden of 2,646,080 hours with an equivalent cost burden of $302,827,980.[295] Once the comparative analyses are performed or documented, plan sponsors would need to update the analyses when making changes to the terms of the plan or coverage, including changes to the way NQTLs are applied to mental health and substance use disorder benefits. In subsequent years, HHS estimates it would take a total of 10 hours annually to update the analyses, 2 hours for a general or operations manager and 8 hours for a business operations specialist. In subsequent years, this would result in a total hour burden of 1,323,040 hours with an equivalent cost burden of approximately $151,413,990.[296]

These proposed rules would also require plans and issuers to make the comparative analyses and other applicable information required by the CAA, 2021 available upon request to participants and beneficiaries in plans subject to ERISA and to participants, beneficiaries, and enrollees in all non-grandfathered group health plans and non-grandfathered group or individual health insurance coverage upon request in connection with an appeal of an adverse benefit. HHS estimates that each non-Federal governmental plan and each issuer would receive one request annually and that plans and issuers would annually incur a burden of 5 minutes for a clerical worker to prepare and send the comparative analyses to each requesting participant, beneficiary, or enrollee. This would result in a total burden of approximately 7,636 hours annually with an equivalent cost of approximately $484,504.[297] HHS also assumes that 58.2 percent of requests would be delivered electronically, resulting in a de minimis cost.[298] The remaining 41.8 percent of requests would be mailed, and the cost of postage for a 3-ounce letter is $1.14. The annual cost burden to mail the comparative analyses to the participants and beneficiaries would therefore be approximately $72,386.[299]

2.2.4. Recordkeeping Requirement

HHS posits that plans and issuers already maintain records as part of their regular business practices. HHS therefore estimates a minimal additional burden associated with these proposed rules. HHS estimates that each non-Federal governmental plan and issuer would annually incur a burden of 5 minutes, on average, for clerical personnel to meet the additional recordkeeping requirements, resulting in a total burden of approximately 7,636 hours annually with an equivalent cost of approximately $484,504.[300]

HHS will revise the information collection approved under OMB Control Number 0938–1393 to account for this burden.[301]

2.2.5. ICRs Regarding the Self-Funded, Non-Federal Governmental Plan Opt-Out Provisions (45 CFR 146.180)

2.2.5.1. Notice to Federal Government of Self-Funded, Non-Federal Governmental Plan Opt-Out: Plan Burden Reduction—Preparation and Processing of Opt-Out Election Notice

The proposed amendments to implement the CAA, 2023 provision that sunsets the MHPAEA opt-out election for sponsors of self-funded, non-Federal governmental plans would eliminate the need for sponsors to submit a notice to the Federal Government regarding their plan's opt-out election (or, for sponsors of multiple plans, their plans' opt-out elections), as long as the sponsors do not elect to permissibly opt out of other requirements.[302] Based on the HIPAA opt-out filings, HHS estimates that the sponsors of 185 plans would no longer be required to submit a notice to the Federal Government regarding their plan's opt-out election (or, for sponsors of multiple plans, notices regarding their plans' opt-out elections). Previously, HHS estimated that for each self-funded, non-Federal governmental plan whose sponsor has elected to opt out of the requirements, a compensation and benefits manager would need 15 minutes annually to fill out and electronically submit the model notification form to HHS, with an equivalent cost of approximately $34.[303] Therefore, these proposed amendments would result in a total annual burden reduction (related to the need to submit

[295] The burden is estimated as follows: (33,076 self-funded non-Federal governmental plans × 4 NQTLs × 4 hours for a general or operations manager) + (33,076 self-funded non-Federal governmental plans × 4 NQTLs × 16 hours for a business operations specialist) = 2,646,080 hours. A labor rate of $132.38 is used for general or operations manager and a labor rate of $109.96 is used for a business operations specialist. The labor rates are applied in the calculation as: (33,076 self-funded non-Federal governmental plans × 4 NQTLs × 4 hours for a general or operations manager × $132.38) + (33,076 self-funded non-Federal governmental plans × 4 NQTLs × 16 hours for a business operations specialist × $109.96) = $302,827,980.

[296] The burden is estimated as follows: (33,076 self-funded non-Federal governmental plans × 4 NQTLs × 2 hours for a general or operations manager) + (33,076 self-funded non-Federal governmental plans × 4 NQTLs × 8 hours for a business operations specialist) = 1,323,040 hours. A labor rate of $132.38 is used for general or operations manager and a labor rate of $109.96 is used for a business operations specialist. The labor rates are applied in the calculation as: (33,076 self-funded non-Federal governmental plans × 4 NQTLs × 2 hours for a general or operations manager × $132.38) + (33,076 self-funded non-Federal governmental plans × 4 NQTLs × 8 hours for a business operations specialist × $109.96) = $151,413,990.

[297] The hour burden is calculated as (90,126 non-Federal governmental plans + 1,500 issuer/State combinations) × 5 minutes = 7,636 hours. A labor rate of $63.45 is used for a clerical worker. The labor rate is applied in the calculation as: (90,126 non-Federal governmental plans + 1,500 issuer/State combinations) × 5 minutes × $63.45 = $484,504.

[298] According to data from the National Telecommunications and Information Agency (NTIA), 40.0 percent of individuals age 25 and over have access to the internet at work. According to a Greenwald & Associates survey, 84 percent of plan participants find it acceptable to make electronic delivery the default option, which is used as the proxy for the number of participants who will not opt-out of electronic disclosure that are automatically enrolled (for a total of 33.6 percent receiving electronic disclosure at work). Additionally, the NTIA reports that 40.4 percent of individuals age 25 and over have access to the internet outside of work. According to a Pew Research Center survey, 61.0 percent of internet users use online banking, which is used as the proxy or the number of internet users who will affirmatively consent to receiving electronic disclosures (for a total of 24.7 percent receiving electronic disclosure outside of work). Combining the 33.6 percent who receive electronic disclosure at work with the 24.7 percent who receive electronic disclosure outside of work produces a total of 58.2 percent who will receive electronic disclosure overall.

[299] The Departments assume one request per entity and that each mailed response will cost $1.89 in materials and postage, on average. The mailing and postage cost assume $.05 per printed page, an average document length of 15 pages and $1.14 in postage for a 3-ounce parcel. Therefore, the cost burden is calculated as follows: (1,500 issuers + 90,126 non-Federal governmental health plans) × 41.8% × ($1.14 + (15 pages × $0.05)) = $72,386.

[300] The hour burden is calculated as (90,126 non-Federal governmental plans + 1,500 issuer/State combinations) × 5 minutes = 7,636 hours. A labor rate of $63.45 is used for a clerical worker. The labor rate is applied in the calculation as: (90,126 non-Federal governmental plans + 1,500 issuer/State combinations) × 5 minutes × $63.45 = $484,504.

[301] CMS–10773, ''Non-Quantitative Treatment Limitation Analyses and Compliance Under MHPAEA.''

[302] Based on the HIPAA opt-out filings, sponsors of 46 self-funded, non-Federal governmental plans permissibly opt out of other requirements (standards relating to benefits for mothers and newborns, required coverage for reconstructive surgery following mastectomies, and/or coverage of dependent students on medically necessary leave of absence).

[303] This includes the time required by the individual signing the certification to conduct a thorough review of the election contents.

a notice to the Federal Government) for sponsors of 185 plans of 46 hours (at a wage rate of $137.64 per hour), with an equivalent annual cost savings of approximately $6,331.[304]

These proposed amendments would also generate cost savings for the Federal Government, as HHS would no longer have to process the opt-out notices submitted by plan sponsors. The processing of the opt-out notices is performed by an HHS employee. The average salary of the employee who completes this task, which includes the locality pay adjustment for the area of Washington-Baltimore-Arlington, is $53.67 per hour for a GS–13, step 1 employee.[305] HHS estimates that on average it takes an HHS employee 15 minutes to process an opt-out notice submitted by a plan sponsor, with an equivalent cost of approximately $13. Because sponsors of 185 plans in total would no longer be required to submit a notice to the Federal Government on behalf of their plan(s), this proposed provision would therefore result in a total annual burden reduction for the Federal Government of 46 hours, with equivalent annual cost savings of approximately $2,469.[306]

2.2.5.2. Notice to Plan Participants of Self-Funded, Non-Federal Governmental Plan Opt-Out: Plan Burden Reduction—Preparation and Processing of Opt-Out Election Notice

The proposed amendments to implement the CAA, 2023 provision that sunsets the MHPAEA opt-out election for sponsors of self-funded non-Federal governmental plans would also eliminate the need for those sponsors to prepare and disseminate an opt-out notice to plan participants regarding their plan sponsors' opt-out election, as long as the sponsors do not elect to permissibly opt out of other requirements. Previously, HHS estimated that for each self-funded, non-Federal governmental plan whose sponsor has elected to opt out of the requirements, an administrative assistant would need 15 minutes to develop and update the HHS standardized disclosure statement annually, with an equivalent cost of approximately $10. Therefore, this proposed provision would result in a total annual burden reduction (related to the need to prepare and disseminate opt-out notices to plan participants) for sponsors of 185 plans of 46 hours (at a wage rate of $41.74), with an equivalent annual cost savings of approximately $1,920.[307] Further, self-funded, non-Federal governmental plan sponsors would no longer be required to print and mail the opt-out notice to plan participants and would therefore no longer incur costs associated with this requirement. As noted earlier in this section 1.5.1, HHS estimates that there are approximately 253 participants in each self-funded, non-Federal governmental plan, and therefore approximately 46,863 notices[308] would no longer have to be printed and mailed. Because plan sponsors would no longer need to print the 1-page notice (at an estimated cost of $0.05 per page), plan sponsors would experience a total cost savings of approximately $2,343.[309]

The burden related to HIPAA opt-outs is currently approved under OMB Control Number 0938–0702.[310] HHS will update the information collection to account for this burden reduction.

2.2.6. Overall Summary

In summary, the total new burden imposed by these proposed rules regarding NQTL comparative analyses and compliance, has a three-year average hour burden of approximately 1,939,425 hours with an equivalent cost of approximately $221,176,812 and a total cost burden of approximately $72,386. The proposed amendments to implement the CAA, 2023 provision that sunsets the MHPAEA opt-out election for sponsors of self-funded, non-Federal governmental plans would result in an annual burden reduction of approximately 92 hours with an equivalent annual cost savings of approximately $8,251.

A summary of the change in paperwork burden estimates follows:

Type of Review: Revision.

Agency: Centers for Medicare & Medicaid Services, U.S. Department of Health and Human Services.

Title: Non-Quantitative Treatment Limitation Analyses and Compliance Under MHPAEA.

OMB Control Number: 0938–1393.

Affected Public: Businesses or other for-profits, Not-for-profit institutions, State, Local, or Tribal Governments.

Estimated Number of Respondents: 91,626.

Estimated Number of Annual Responses: 91,626.

Frequency of Response: Annual.

Estimated Total Annual Burden Hours: 1,939,425.

Estimated Total Annual Burden Cost: $72,386.

Title: Requirements for Compliance with Individual and Group Market Reforms under Title XXVII of the Public Health Service Act.

OMB Control Number: 0938–0702.

Affected Public: State, Local, or Tribal Governments.

Estimated Number of Respondents: (185).

Estimated Number of Annual Responses: (185).

Frequency of Response: Annual.

Estimated Total Annual Burden Hours: (92).

Estimated Total Annual Burden Cost: ($2,343).

Note: Numbers in parentheses denote a burden reduction.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[311] imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act[312] and are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis of the proposed rule.

The Departments have limited data to determine if these proposed amendments would have a significant impact on a substantial number of small entities. The Departments have prepared this initial regulatory flexibility analysis and request data or other information it would need to make a determination. The Departments request data or information on the number of plans and issuers that are not conducting adequate

[304] The total annual burden reduction is calculated as: 185 plans × 15 minutes = 46 hours. A labor rate of $137.64 is used for a compensation and benefits manager. The labor rate is applied in the calculation as: 185 plans × 15 minutes × $137.64 = $6,331.

[305] *See* Office of Personnel Management 2023 General Schedule (GS) Locality Pay Tables, available at: *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/DCB_h.pdf.*

[306] The total annual burden reduction for the Federal government is calculated as: 185 plans × 15 minutes = 46 hours. A labor rate of $53.67 is used for an HHS employee. The labor rate is applied in the calculation as: 185 plans × 15 minutes × $53.67 = $2,469.

[307] The total annual burden reduction is calculated as: 185 plans × 15 minutes = 46 hours. A labor rate of $41.74 is used for an administrative assistant. The labor rate is applied in the calculation as: 185 plans × 15 minutes × $41.74 = $1,920.

[308] 185 plans × slightly more than 253 participants per plan on average ≈46,863 notices in total.

[309] The total cost savings is calculated as: 46,863 notices × $0.05 = $2,343.

[310] CMS–10430, ''Information Collection Requirements for Compliance with Individual and Group Market Reforms under Title XXVII of the Public Health Service Act.''

[311] 5 U.S.C. 601 *et seq.* (1980).

[312] 5 U.S.C. 551 *et seq.* (1946).

comparative analyses and how the proposed additional guidance would result in better compliance and access to those benefits.

3.1. Need for and Objectives of the Rule

As documented in the 2022 MHPAEA Report to Congress and the 2023 MHPAEA Report to Congress,[313] the Departments found that none of the NQTL comparative analyses they reviewed upon initial receipt contained sufficient information and documentation.

The proposed amendments to the existing MHPAEA regulations would clarify existing definitions, add new definitions of key terms, require plans and issuers to determine which NQTLs apply to substantially all medical/surgical benefit classifications and what variation of a given NQTL is the predominant (that is, most common or frequent) variation, ensure that the application of the parity requirements to NQTLs is no more restrictive for mental health and substance use disorder benefits than for medical/surgical benefits, and provide additional examples of the application of MHPAEA to NQTLs to improve the understanding and ability of the regulated community to comply with MHPAEA. The proposed amendments would also clarify that mental health and substance use disorder definitions must be consistent with generally recognized independent standards of current medical practice and would add more specificity as to what plans and issuers must treat as mental health conditions or substance use disorders.

These proposed rules would amend existing guidance, set more specific content requirements for comparative analyses required by the CAA, 2021, clarify when a comparative analysis needs to be performed and for which NQTLs, and outline the process for plans and issuers to provide their comparative analyses to the Departments upon request. These proposed rules would also require plans and issuers to collect and evaluate relevant data with each comparative analysis requested by the Departments, including but not limited to claims denials, data relevant to NQTLs as required by State law or private accreditation standards, utilization rates, network adequacy metrics, and provider reimbursement rates, in fulfillment of the existing requirement that they evaluate and document their evaluation as part of the analysis of the application of NQTLs related to network composition and provider reimbursement. The data would be further defined in future guidance, which will allow the Departments to adjust the data requirements as needed to account for enforcement experience and industry trends. The Departments also anticipate that future guidance would also set forth an enforcement safe harbor for NQTLs related to network composition for plans and issuers that meet certain standards with the data they submit.

The Departments expect that these proposed rules would result in plans and issuers having a better understanding of the MHPAEA requirements with respect to NQTLs. These proposed rules would also improve the manner in which parity is measured, compared, and demonstrated by plans and issuers. The Departments believe these proposed rules and future guidance would improve the compliance of plans and issuers with these requirements, resulting in greater access to and utilization of treatment for mental health and substance use disorders, as intended by MHPAEA.

3.2. Affected Small Entities

For purposes of analysis under the RFA, DOL considers employee benefit plans with fewer than 100 participants to be small entities. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for plans that cover fewer than 100 participants. Under section 104(a)(3) of ERISA, the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to the authority of section 104(a)(3), DOL has previously issued (see 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46, and 2520.104b–10) simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans, that cover fewer than 100 participants and satisfy certain requirements. While some large employers have small plans, small plans are maintained generally by small employers. Thus, the Departments believe that assessing the impact of these proposed rules on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration (SBA) pursuant to the Small Business Act.

As discussed in subsection 1.5.1 of the RIA, these proposed rules would affect all small ERISA-covered group health plans, including fully-insured group health plans and self-insured group health plans, as well as small health insurance issuers and non-Federal governmental plans. The Departments estimate that these proposed rules would affect approximately 114,200 fully insured plans with 50 to 100 participants,[314] and approximately 1,488,000 fully insured, non-grandfathered plans with less than 50 participants.[315]

The Departments also estimate that approximately 38,000 self-insured group health plans with 50 to 100 participants would be affected by these proposed rules.[316] The Departments estimate that

[313] 2022 MHPAEA Report to Congress, available at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2022-realizing-parity-reducing-stigma-and-raising-awareness.pdf;* 2023 MHPAEA Report to Congress, available at *www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2023-mhpaea-comparative-analysis.pdf.*

[314] The Departments estimate that there are 152,254 ERISA-covered group health plans with 50 to 100 participants based on the 2021 Medical Expenditure Survey—Insurance Component (MEPS–IC) and the 2019 County Business Patterns from the Census Bureau. The Departments also estimate that 75 percent of ERISA-covered group health plans with 50 to 100 participants are fully insured based on assumptions referencing this same data. Thus, the Departments have calculated the number of fully insured plans with 50 to 100 participants in the following manner: 152,254 ERISA-covered group health plans with 50 to 100 participants × 75% = 114,191.

[315] Employers with less than 50 employees are required to comply with MHPAEA as part of the Essential Health Benefits requirements. The Departments estimate that there are 2,134,934 ERISA-covered group health plans with less than 50 participants based on data from the 2021 MEPS–IC and the 2019 County Business Patterns from the Census Bureau. The Departments also estimate that 83 percent of group health plans with less than 50 participants are fully insured based on data from the 2021 MEPS–IC. The 2020 Kaiser Employer Health Benefits Survey reported that in 2020, 16 percent of firms offering health benefits offered at least one grandfathered health plan, therefore, the Departments assume the percent of firms offering at least one non-grandfathered health plan is 84% (100% minus 16%). (*Source:* KFF. 2020 Kaiser Employer Health Benefits Survey.) *https://files.kff.org/attachment/Report-Employer-Health-Benefits-2020-Annual-Survey.pdf*). Thus, the Departments have calculated the number of fully insured, non-grandfathered plans with less than 50 participants in the following manner: 2,134,934 small ERISA-covered group health plans × 83% × 84% = 1,488,475.

[316] MHPAEA only applies to ERISA plans in the group market with 50 or more participants that offer mental health or substance use disorder benefits. The Departments have not identified what share of plans with 50 or more participants offer mental health or substance use disorder benefits and so have assumed that all of these plans offer them. The Departments seeks comments on this assumption. Based on the 2021 MEPS–IC, 25 percent of ERISA-covered group health plans with 50 to 100 participants are self-insured. Thus, the Departments calculate the number of self-insured group health plans with 50 to 100 participants based on the

approximately 27,000 self-insured group health plans would not utilize a service provider, and would incur the cost directly,[317] and the other self-insured health plans would utilize service providers to perform the analysis. The largest would need to conduct the analyses themselves for their plan-specific design. Finally, the Departments estimate that approximately 14,400 non-Federal governmental health plans would be affected by these proposed rules, of which the majority of plans are assumed to be large.[318]

As discussed in subsection 1.5.3 of the RIA, these proposed rules would also affect health insurance issuers. The Departments estimate that these proposed rules would affect 476 health insurance issuers providing mental health and substance use disorder benefits in the group and individual health insurance markets, with 1,500 issuer/State combinations offering coverage in multiple States.[319]

Health insurance issuers are generally classified under the North American Industry Classification System (NAICS) code 524114 (Direct Health and Medical Insurance Carriers). According to SBA size standards, entities with average annual receipts of $47 million or less are considered small entities for this NAICS code.[320] The Departments expect that few, if any, insurance companies underwriting health insurance policies fall below these size thresholds. Based on data from medical loss ratio (MLR) annual report submissions for the 2021 MLR reporting year, approximately 87 out of 483 issuers of health insurance coverage nationwide had total premium revenue of $47 million or less.[321] However, it should be noted that over 77 percent of these small companies belong to larger holding groups, and many, if not all, of these small companies, are likely to have non-health lines of business that would result in their revenues exceeding $47 million. To produce a conservative estimate, for the purposes of this analysis, the Departments assume 8.6 percent,[322] or 129 issuer/State combinations are considered small entities.[323]

The proposed amendments to implement the CAA, 2023 provision that sunsets the MHPAEA opt-out election would affect sponsors of self-funded, non-Federal governmental plans, some of which might be small entities. As noted in section 1.10 of this RIA, the extent to which these plans are out of compliance is unknown, and the costs for them to come into compliance are expected to vary from plan to plan. HHS seeks comments on the number of small entities that would be impacted by the implementation of the sunset provision and the potential effects on small entities.

3.3. Impact of the Rule

3.3.1. Amendments to Existing MHPAEA Regulation (26 CFR 54.9812–1, 29 CFR 2590.712, 45 CFR 146.136)

The proposed amendments to the existing MHPAEA regulations would clarify existing definitions, add new definitions, require plans and issuers to determine which NQTLs apply to substantially all medical/surgical benefit classifications and what level or variation of a given NQTL is the most common or frequent, ensure that the application of NQTLs is generally no more restrictive for mental health and substance use disorder benefits than for medical/surgical benefits, and provide additional examples of the application of MHPAEA to NQTLs to improve the understanding and ability of the regulated community to comply with MHPAEA. The proposed amendments would also clarify that mental health benefits and substance use disorder benefits must be defined to be consistent with generally recognized independent standards of current medical practice and would add more specificity as to what plans and issuers must treat as mental health conditions or substance use disorders. The Departments believe that the proposed amendments might cause small plans and issuers to revise their policies and remove treatment limitations. Therefore, small plans and issuers could incur costs to revise plan provisions which may result in increased costs from expanded utilization of mental health and substance use disorder services. The Departments face uncertainty in quantifying these costs as they cannot estimate the increase in utilization and which particular services may see the largest increase in utilization.

3.3.2. New Regulations (26 CFR 54.9812–2, 29 CFR 2590.712–1, and 45 CFR 146.137 and 146.180)

These proposed rules would amend existing guidance, set more specific content requirements for comparative analyses required by the CAA, 2021, clarify when the comparative analysis needs to be performed and for which NQTLs, and outline the timeframes and process for plans and issuers to provide their comparative analyses to the Departments upon request. Participants, beneficiaries, and enrollees may also request the comparative analyses at any time. These proposed rules would also require plans and issuers to collect and evaluate relevant data as part of each comparative analysis, including but not limited to claims denials, data relevant to NQTLs as required by State law or private accreditation standards, utilization rates, network adequacy metrics, and provider reimbursement rates, in fulfillment of the existing requirement that they evaluate and document their evaluation as part of the analysis of the application of NQTLs related to network composition and provider reimbursement. The Departments believe that plans and issuers would incur costs in collecting, preparing, and analyzing the data. The Departments request comments on whether plans and issuers already collect and examine this data. Additionally, in these proposed rules,

following manner: 152,254 ERISA-covered group health plans with less than 100 participants × 25% of ERISA-covered group health plans with 50 to 100 participants are self-insured = 38,064.

[317] Based on the 2020 Form 5500, 89 percent of self-insured plans filed a Schedule C and indicated using either a Claims Processor, Contract Administrator, or both.

[318] Based on the 2017 Census of Government, there are 90,126 State and local entities. The Departments assume that there is one plan per entity, on average. Therefore, the Departments estimate that there are 90,126 non-Federal governmental health plans. MHPAEA applies to non-Federal governmental employers with 50 or more employees that offer mental health or substance use disorder benefits. The Departments have not identified what share of plans with 50 or more participants offer mental health or substance use disorder benefits and so has have assumed that all of these plans offer them. The Departments seek comments on this assumption. Based on the 2021 Medical Expenditure Survey Insurance Component (MEPS–IC) and the 2019 County Business Patterns from the Census Bureau, 16 percent of ERISA-covered group health plans have 50 or more participants. The Departments use the percent of ERISA-covered group plans with more than 50 participants as a proxy for the percent of non-Federal governmental plans with more than 50 participants. Therefore, the Departments estimate there are 14,420 public, non-Federal employer group health plans with 50 or more participants that offer mental health or substance use disorder benefits (90,126 non-Federal governmental health plans × 16 percent of plans with 50 or more employees).

[319] The Departments' estimate of the number of health insurance insurers and the number of issuer/State combinations is based on medical loss ratio reports submitted by issuers for the 2021 reporting year. (*Source:* Centers for Medicare & Medicaid Services. ''Medical Loss Ratio Data and System Resources'' (2021). *https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.*)

[320] Available at: *https://www.sba.gov/document/support--table-size-standards,* as of March 2023.

[321] Available at: *https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.html.*

[322] Based on data from the NAICS Association for NAICS code 524114, the Departments estimate the percent of businesses within the industry of Direct Health and Medical Insurer Carriers with less than $47 million in annual sales. (*See* NAICS Association. ''Market Analysis Profile: NAICS Code Annual Sales.'' *https://www.naics.com/business-lists/counts-by-naics-code/.*)

[323] 1,500 issuers/State combination × 8.6 percent = 129 small issuers.

HHS proposes regulatory amendments to implement the provision in the CAA, 2023 that sunsets the election option for self-funded, non-Federal governmental plans to opt out of requirements under MHPAEA.

In the first year, the Departments estimate that self-insured group health plans and health insurance issuers would incur an incremental per-entity cost of approximately $5,600 and $5,800, respectively associated with these proposed rules and amendments. In the subsequent years, the Departments estimate that self-insured group health plans and health insurance issuers would both incur an incremental per-entity cost of approximately $1,900 associated with these proposed rules and amendments. The Departments note that these per-entity costs are the average costs, and these costs are expected to vary by plan or issuer depending on the number of NQTL analyses performed.

3.4. Duplicate, Overlapping, or Relevant Federal Rules

There are no duplicate, overlapping, or relevant Federal rules.

4. Special Analyses—Department of the Treasury

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

5. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 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 (adjusted annually for inflation with the base year 1995) in any 1 year by State, local, and Tribal governments, in the aggregate, or by the private sector.[324] In 2023, that threshold is approximately $177 million. For purposes of the Unfunded Mandates Reform Act, as well as Executive Order 12875,[325] this proposal includes Federal mandates that the Departments expect would result in such expenditures by State, local, or Tribal governments, or the private sector. UMRA requires that regulations including such Federal mandates provide a qualitative and quantitative assessment of the anticipated costs and benefits of the regulations. For the purposes of these proposed rules, the RIA shall meet this obligation.

6. Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have ''substantial direct effects'' on the States, the relationship between the Federal Government and States, or on the distribution of power and responsibilities among the various levels of government.[326] Federal agencies promulgating regulations that have federalism implications must consult with State and local officials and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to these proposed rules.

In the Departments' view, these proposed rules could have federalism implications because they would have direct effects on the States, on the relationship between the Federal Government and the States, and on the distribution of power and responsibilities among various levels of government. These proposed rules could also have federalism implications because the Departments propose to remove the reference to State guidelines in the definition of medical/surgical benefits, mental health benefits, and substance use disorder benefits, and amend the definition to provide that any condition or procedure defined by the plan or coverage as being or not being a medical condition or surgical procedure, mental health condition, or substance use disorder must be defined to be consistent with generally recognized independent standards of current medical practice, such as the ICD or DSM. Finally, these proposed rules could have federalism implications because the implementation of the CAA, 2023 provision that sunsets the MHPAEA opt-out election would require State and local government sponsors of self-funded plans that currently opt out of requirements under MHPAEA to come into compliance.

In general, through section 514, ERISA supersedes State laws to the extent that they relate to any covered employee benefit plan, and preserves State laws that regulate insurance, banking, or securities. While ERISA prohibits States from regulating a plan as an insurance or investment company or bank, the preemption provisions of section 731 of ERISA and section 2724 of the PHS Act (implemented in 29 CFR 2590.731(a) and 45 CFR 146.143(a)) apply so that the MHPAEA requirements are not to be ''construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with individual or group health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement'' of MHPAEA. The conference report accompanying HIPAA indicates that this is intended to be the ''narrowest'' preemption of State laws. (See House Conf. Rep. No. 104–736, at 205, reprinted in 1996 U.S. Code Cong. & Admin. News 2018.)

States may continue to apply State law requirements except to the extent that such requirements prevent the application of the MHPAEA requirements that are the subject of this rulemaking. State insurance laws that are more stringent than the Federal requirements are unlikely to ''prevent the application of'' MHPAEA and be preempted. Accordingly, States have significant latitude to impose requirements on health insurance issuers that are more restrictive than the Federal law.

Throughout the process of developing these proposed rules, to the extent feasible within the specific preemption provisions of HIPAA as it applies to MHPAEA, the Departments have attempted to balance the States' interests in regulating health insurance issuers, and Congress' intent to provide uniform minimum protections to consumers in every State. By doing so, it is the Departments' view that they have complied with the requirements of Executive Order 13132.

The Departments welcome input from affected States regarding this assessment.

List of Subjects

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2590

Continuation coverage, Disclosure, Employee benefit plans, Group health plans, Health care, Health insurance,

[324] 2 U.S.C. 1501 *et seq.* (1995).

[325] Enhancing the Intergovernmental Partnership, 58 FR 58093 (Oct. 28, 1993).

[326] Federalism, 64 FR 153 (Aug. 4, 1999).

Medical child support, Reporting and recordkeeping requirements.

45 CFR Part 146

Health care, Health insurance, Reporting and recordkeeping requirements.

45 CFR Part 147

Aged, Citizenship and naturalization, Civil rights, Health care, Health insurance, Individuals with disabilities, Intergovernmental relations, Reporting and recordkeeping requirements, Sex discrimination.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

Lisa M. Gomez,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Xavier Becerra,

Secretary, Department of Health and Human Services.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 54 as follows:

PART 54—PENSION EXCISE TAXES

■ 1. The authority citation for part 54 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ 2. Amend § 54.9812–1 by:
■ a. Redesignating paragraph (a) as paragraph (a)(2) and adding paragraphs (a) heading and (a)(1);
■ b. In newly redesignated paragraph (a)(2):
■ i. Revising the introductory text;
■ ii. Adding the definitions of ''DSM,'' ''Evidentiary standards,'' ''Factors,'' and ''ICD'' in alphabetical order;
■ iii. Revising the definitions of ''Medical/surgical benefits'' and ''Mental health benefits'';
■ iv. Adding the definitions of ''Processes'' and ''Strategies'' in alphabetical order; and
■ v. Revising the definitions of ''Substance use disorder benefits'' and ''Treatment limitations'';
■ c. Revising paragraphs (c)(1)(ii), (c)(2)(i), and (c)(2)(ii)(A) introductory text;
■ d. In paragraph (c)(2)(ii)(C), designating *Examples 1* through *4* as paragraphs (c)(2)(ii)(C)(*1*) through (*4*) and revising newly designated paragraphs (c)(2)(ii)(C)(*1*) through (*4*);
■ e. Adding paragraphs (c)(2)(ii)(C)(*5*) and (*6*);
■ f. Revising paragraphs (c)(3)(i)(A), (C), and (D);
■ g. In paragraph (c)(3)(iii), adding introductory text;
■ h. Revising paragraphs (c)(3)(iii)(A) and (B), (c)(3)(iv), (c)(4), (d)(3), (e)(4), and (i)(1); and
■ i. Adding paragraph (j).

The revisions and additions read as follows:

§ 54.9812–1 Parity in mental health and substance use disorder benefits.

(a) *Purpose and meaning of terms*—(1) *Purpose.* This section and § 54.9812–2 set forth rules to ensure parity in aggregate lifetime and annual dollar limits, financial requirements, and quantitative and nonquantitative treatment limitations between mental health and substance use disorder benefits and medical/surgical benefits, as required under Code section 9812. A fundamental purpose of Code section 9812, this section, and § 54.9812–2 is to ensure that participants and beneficiaries in a group health plan that offers mental health or substance use disorder benefits are not subject to more restrictive lifetime or annual dollar limits, financial requirements, or treatment limitations with respect to those benefits than the predominant dollar limits, financial requirements, or treatment limitations that are applied to substantially all medical/surgical benefits covered by the plan, as further provided in this section and § 54.9812–2. Accordingly, in complying with the provisions of Code section 9812, this section, and § 54.9812–2, plans must not design or apply financial requirements and treatment limitations that impose a greater burden on access (that is, are more restrictive) to mental health and substance use disorder benefits under the plan than they impose on access to generally comparable medical/surgical benefits. The provisions of Code section 9812, this section, and § 54.9812–2 should be interpreted in a manner that is consistent with the purpose described in this paragraph (a)(1).

(2) *Meaning of terms.* For purposes of this section and § 54.9812–2, except where the context clearly indicates otherwise, the following terms have the meanings indicated:

* * * * *

DSM means the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. For the purpose of this definition, the most current version of the DSM is the version that is applicable no earlier than on the date that is 1 year before the first day of the applicable plan year.

Evidentiary standards are any evidence, sources, or standards that a group health plan considered or relied upon in designing or applying a factor with respect to a nonquantitative treatment limitation, including specific benchmarks or thresholds. Evidentiary standards may be empirical, statistical, or clinical in nature, and include: sources acquired or originating from an objective third party, such as recognized medical literature, professional standards and protocols (which may include comparative effectiveness studies and clinical trials), published research studies, payment rates for items and services (such as publicly available databases of the ''usual, customary and reasonable'' rates paid for items and services), and clinical treatment guidelines; internal plan data, such as claims or utilization data or criteria for assuring a sufficient mix and number of network providers; and benchmarks or thresholds, such as measures of excessive utilization, cost levels, time or distance standards, or network participation percentage thresholds.

Factors are all information, including processes and strategies (but not evidentiary standards), that a group health plan considered or relied upon to design a nonquantitative treatment limitation, or to determine whether or how the nonquantitative treatment limitation applies to benefits under the plan. Examples of factors include, but are not limited to: provider discretion in determining a diagnosis or type or length of treatment; clinical efficacy of any proposed treatment or service; licensing and accreditation of providers; claim types with a high percentage of fraud; quality measures; treatment outcomes; severity or chronicity of condition; variability in the cost of an episode of treatment; high cost growth; variability in cost and quality; elasticity of demand; and geographic location.

* * * * *

ICD means the World Health Organization's International Classification of Diseases adopted by the Department of Health and Human Services through 45 CFR 162.1002. For the purpose of this definition, the most current version of the ICD is the version that is applicable no earlier than on the date that is 1 year before the first day of the applicable plan year.

Medical/surgical benefits means benefits with respect to items or services for medical conditions or surgical procedures, as defined under the terms of the group health plan and in accordance with applicable Federal and State law, but does not include mental health benefits or substance use disorder benefits. Notwithstanding the preceding sentence, any condition or procedure defined by the plan as being

or as not being a medical condition or surgical procedure must be defined consistent with generally recognized independent standards of current medical practice (for example, the most current version of the ICD). To the extent generally recognized independent standards of current medical practice do not address whether a condition or procedure is a medical condition or surgical procedure, plans may define the condition or procedure in accordance with applicable Federal and State law.

Mental health benefits means benefits with respect to items or services for mental health conditions, as defined under the terms of the group health plan and in accordance with applicable Federal and State law, but does not include medical/surgical benefits or substance use disorder benefits. Notwithstanding the preceding sentence, any condition defined by the plan as being or as not being a mental health condition must be defined consistent with generally recognized independent standards of current medical practice. For the purpose of this definition, to be consistent with generally recognized independent standards of current medical practice, the definition must include all conditions covered under the plan, except for substance use disorders, that fall under any of the diagnostic categories listed in the mental, behavioral, and neurodevelopmental disorders chapter (or equivalent chapter) of the most current version of the ICD or that are listed in the most current version of the DSM. To the extent generally recognized independent standards of current medical practice do not address whether a condition is a mental health condition, plans may define the condition in accordance with applicable Federal and State law.

Processes are actions, steps, or procedures that a group health plan uses to apply a nonquantitative treatment limitation, including actions, steps, or procedures established by the plan as requirements in order for a participant or beneficiary to access benefits, including through actions by a participant's or beneficiary's authorized representative or a provider or facility. Processes include but are not limited to: procedures to submit information to authorize coverage for an item or service prior to receiving the benefit or while treatment is ongoing (including requirements for peer or expert clinical review of that information); provider referral requirements; and the development and approval of a treatment plan. Processes also include the specific procedures used by staff or other representatives of a plan (or the service provider of a plan) to administer the application of nonquantitative treatment limitations, such as how a panel of staff members applies the nonquantitative treatment limitation (including the qualifications of staff involved, number of staff members allocated, and time allocated), consultations with panels of experts in applying the nonquantitative treatment limitation, and reviewer discretion in adhering to criteria hierarchy when applying a nonquantitative treatment limitation.

Strategies are practices, methods, or internal metrics that a plan considers, reviews, or uses to design a nonquantitative treatment limitation. Examples of strategies include but are not limited to: the development of the clinical rationale used in approving or denying benefits; deviation from generally accepted standards of care; the selection of information deemed reasonably necessary to make a medical necessity determination; reliance on treatment guidelines or guidelines provided by third-party organizations; and rationales used in selecting and adopting certain threshold amounts, professional protocols, and fee schedules. Strategies also include the creation and composition of the staff or other representatives of a plan (or the service provider of a plan) that deliberates, or otherwise makes decisions, on the design of nonquantitative treatment limitations, including the plan's decisions related to the qualifications of staff involved, number of staff members allocated, and time allocated; breadth of sources and evidence considered; consultations with panels of experts in designing the nonquantitative treatment limitation; and the composition of the panels used to design a nonquantitative treatment limitation.

Substance use disorder benefits means benefits with respect to items or services for substance use disorders, as defined under the terms of the group health plan and in accordance with applicable Federal and State law, but does not include medical/surgical benefits or mental health benefits. Notwithstanding the preceding sentence, any disorder defined by the plan as being or as not being a substance use disorder must be defined consistent with generally recognized independent standards of current medical practice. For the purpose of this definition, to be consistent with generally recognized independent standards of current medical practice, the definition must include all disorders covered under the plan that fall under any of the diagnostic categories listed as a mental or behavioral disorder due to psychoactive substance use (or equivalent category) in the mental, behavioral and neurodevelopmental disorders chapter (or equivalent chapter) of the most current version of the ICD or that are listed as a Substance-Related and Addictive Disorder (or equivalent category) in the most current version of the DSM. To the extent generally recognized independent standards of current medical practice do not address whether a disorder is a substance use disorder, plans may define the disorder in accordance with applicable Federal and State law.

Treatment limitations include limits on benefits based on the frequency of treatment, number of visits, days of coverage, days in a waiting period, or other similar limits on the scope or duration of treatment. Treatment limitations include both quantitative treatment limitations, which are expressed numerically (such as 50 outpatient visits per year), and nonquantitative treatment limitations, which otherwise limit the scope or duration of benefits for treatment under a plan. (See paragraph (c)(4)(iii) of this section for an illustrative, non-exhaustive list of nonquantitative treatment limitations.) A complete exclusion of all benefits for a particular condition or disorder, however, is not a treatment limitation for purposes of this definition.

* * * * *

(c) * * *

(1) * * *

(ii) *Type of financial requirement or treatment limitation.* When reference is made in this paragraph (c) to a type of financial requirement or treatment limitation, the reference to type means its nature. Different types of financial requirements include deductibles, copayments, coinsurance, and out-of-pocket maximums. Different types of quantitative treatment limitations include annual, episode, and lifetime day and visit limits. See paragraph (c)(4)(iii) of this section for an illustrative, non-exhaustive list of nonquantitative treatment limitations.

* * * * *

(2) * * *

(i) *General rule.* A group health plan that provides both medical/surgical benefits and mental health or substance use disorder benefits may not apply any financial requirement or treatment limitation to mental health or substance use disorder benefits in any classification that is more restrictive than the predominant financial

requirement or treatment limitation of that type applied to substantially all medical/surgical benefits in the same classification. Whether a financial requirement or treatment limitation is a predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in a classification is determined separately for each type of financial requirement or treatment limitation. A plan may not impose any financial requirement or treatment limitation that is applicable only with respect to mental health or substance use disorder benefits and not to any medical/surgical benefits in the same benefit classification. The application of the rules of this paragraph (c)(2) to financial requirements and quantitative treatment limitations is addressed in paragraph (c)(3) of this section; the application of the rules of this paragraph (c)(2) to nonquantitative treatment limitations is addressed in paragraph (c)(4) of this section.

(ii) * * *

(A) *In general.* If a plan provides any benefits for a mental health condition or substance use disorder in any classification of benefits described in this paragraph (c)(2)(ii), benefits for that mental health condition or substance use disorder must be provided in every classification in which medical/surgical benefits are provided. For purposes of this paragraph (c)(2)(ii), a plan providing any benefits for a mental health condition or substance use disorder in any classification of benefits does not provide benefits for the mental health condition or substance use disorder in every classification in which medical/surgical benefits are provided unless the plan provides meaningful benefits for treatment for that condition or disorder in each such classification, as determined in comparison to the benefits provided for medical/surgical conditions in the classification. In determining the classification in which a particular benefit belongs, a plan must apply the same standards to medical/surgical benefits and to mental health or substance use disorder benefits. To the extent that a plan provides benefits in a classification and imposes any separate financial requirement or treatment limitation (or separate level of a financial requirement or treatment limitation) for benefits in the classification, the rules of this paragraph (c) apply separately with respect to that classification for all financial requirements or treatment limitations (illustrated in examples in paragraph (c)(2)(ii)(C) of this section). The following classifications of benefits are the only classifications used in applying the rules of this paragraph (c), in addition to the permissible sub-classifications described in paragraph (c)(3)(iii) of this section:

* * * * *

(C) * * *

(*1*) *Example 1*—(*i*) *Facts.* A group health plan offers inpatient and outpatient benefits and does not contract with a network of providers. The plan imposes a $500 deductible on all benefits. For inpatient medical/surgical benefits, the plan imposes a coinsurance requirement. For outpatient medical/surgical benefits, the plan imposes copayments. The plan imposes no other financial requirements or treatment limitations.

(*ii*) *Conclusion.* In this paragraph (c)(2)(ii)(C)(*1*) (*Example 1*), because the plan has no network of providers, all benefits provided are out-of-network. Because inpatient, out-of-network medical/surgical benefits are subject to separate financial requirements from outpatient, out-of-network medical/surgical benefits, the rules of this paragraph (c) apply separately with respect to any financial requirements and treatment limitations, including the deductible, in each classification.

(*2*) *Example 2*—(*i*) *Facts.* A plan imposes a $500 deductible on all benefits. The plan has no network of providers. The plan generally imposes a 20 percent coinsurance requirement with respect to all benefits, without distinguishing among inpatient, outpatient, emergency care, or prescription drug benefits. The plan imposes no other financial requirements or treatment limitations.

(*ii*) *Conclusion.* In this paragraph (c)(2)(ii)(C)(*2*) (*Example 2*), because the plan does not impose separate financial requirements (or treatment limitations) based on classification, the rules of this paragraph (c) apply with respect to the deductible and the coinsurance across all benefits.

(*3*) *Example 3*—(*i*) *Facts.* Same facts as in paragraph (c)(2)(ii)(C)(*2*)(*i*) of this section (*Example 2*), except the plan exempts emergency care benefits from the 20 percent coinsurance requirement. The plan imposes no other financial requirements or treatment limitations.

(*ii*) *Conclusion.* In this paragraph (c)(2)(ii)(C)(*3*) (*Example 3*), because the plan imposes separate financial requirements based on classifications, the rules of this paragraph (c) apply with respect to the deductible and the coinsurance separately for benefits in the emergency care classification and all other benefits.

(*4*) *Example 4*—(*i*) *Facts.* Same facts as in paragraph (c)(2)(ii)(C)(*2*)(*i*) of this section (*Example 2*), except the plan also imposes a preauthorization requirement for all inpatient treatment in order for benefits to be paid. No such requirement applies to outpatient treatment.

(*ii*) *Conclusion.* In this paragraph (c)(2)(ii)(C)(*4*) (*Example 4*), because the plan has no network of providers, all benefits provided are out-of-network. Because the plan imposes a separate treatment limitation based on classifications, the rules of this paragraph (c) apply with respect to the deductible and coinsurance separately for inpatient, out-of-network benefits and all other benefits.

(*5*) *Example 5*—(*i*) *Facts.* A plan generally covers treatment for autism spectrum disorder (ASD), a mental health condition, and covers outpatient, out-of-network developmental evaluations for ASD but excludes all other benefits for outpatient treatment for ASD, including applied behavioral analysis (ABA) therapy, when provided on an out-of-network basis. The plan generally covers the full range of outpatient treatments and treatment settings for medical conditions and surgical procedures when provided on an out-of-network basis.

(*ii*) *Conclusion.* In this paragraph (c)(2)(ii)(C)(*5*) (*Example 5*), the plan violates the rules of this paragraph (c)(2)(ii). Because the plan only covers one type of benefit for ASD in the outpatient, out-of-network classification and excludes all other benefits for ASD in the classification, but generally covers the full range of medical/surgical benefits in the classification, it fails to provide meaningful benefits for treatment of ASD in the classification.

(*6*) *Example 6*—(*i*) *Facts.* A plan generally covers diagnosis and treatment for eating disorders, a mental health condition, but specifically excludes coverage for nutrition counseling to treat eating disorders, including in the outpatient, in-network classification. Nutrition counseling is one of the primary treatments for eating disorders. The plan generally provides benefits for the primary treatments for medical/surgical conditions in the outpatient, in-network classification.

(*ii*) *Conclusion.* In this paragraph (c)(2)(ii)(C)(*6*) (*Example 6*), the plan violates the rules of this paragraph (c)(2)(ii). The exclusion of coverage for nutrition counseling for eating disorders results in the plan failing to provide meaningful benefits for the treatment of eating disorders in the outpatient, in-network classification, as determined in comparison to the benefits provided for medical/surgical conditions in the classification.

(3) * * *

(i) * * *

(A) *Substantially all.* For purposes of this paragraph (c)(3), a type of financial requirement or quantitative treatment limitation is considered to apply to substantially all medical/surgical benefits in a classification of benefits if it applies to at least two-thirds of all medical/surgical benefits in that classification. (For purposes of this paragraph (c)(3)(i)(A), benefits expressed as subject to a zero level of a type of financial requirement are treated as benefits not subject to that type of financial requirement, and benefits expressed as subject to a quantitative treatment limitation that is unlimited are treated as benefits not subject to that type of quantitative treatment limitation.) If a type of financial requirement or quantitative treatment limitation does not apply to at least two-thirds of all medical/surgical benefits in a classification, then that type cannot be applied to mental health or substance use disorder benefits in that classification.

* * * * *

(C) *Portion based on plan payments.* For purposes of this paragraph (c)(3), the determination of the portion of medical/surgical benefits in a classification of benefits subject to a financial requirement or quantitative treatment limitation (or subject to any level of a financial requirement or quantitative treatment limitation) is based on the dollar amount of all plan payments for medical/surgical benefits in the classification expected to be paid under the plan for the plan year (or for the portion of the plan year after a change in plan benefits that affects the applicability of the financial requirement or quantitative treatment limitation).

(D) *Clarifications for certain threshold requirements.* For any deductible, the dollar amount of plan payments includes all plan payments with respect to claims that would be subject to the deductible if it had not been satisfied. For any out-of-pocket maximum, the dollar amount of plan payments includes all plan payments associated with out-of-pocket payments that are taken into account towards the out-of-pocket maximum as well as all plan payments associated with out-of-pocket payments that would have been made towards the out-of-pocket maximum if it had not been satisfied. Similar rules apply for any other thresholds at which the rate of plan payment changes. (See also PHS Act section 2707 and Affordable Care Act section 1302(c), which establish annual limitations on out-of-pocket maximums for all non-grandfathered health plans.)

* * * * *

(iii) *Special rules.* Unless specifically permitted under this paragraph (c)(3)(iii), sub-classifications are not permitted when applying the rules of paragraph (c)(3) of this section.

(A) *Multi-tiered prescription drug benefits.* If a plan applies different levels of financial requirements to different tiers of prescription drug benefits based on reasonable factors determined in accordance with the rules in paragraph (c)(4) of this section (relating to requirements for nonquantitative treatment limitations) and without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits, the plan satisfies the parity requirements of this paragraph (c) with respect to prescription drug benefits. Reasonable factors include cost, efficacy, generic versus brand name, and mail order versus pharmacy pick-up.

(B) *Multiple network tiers.* If a plan provides benefits through multiple tiers of in-network providers (such as an in-network tier of preferred providers with more generous cost-sharing to participants than a separate in-network tier of participating providers), the plan may divide its benefits furnished on an in-network basis into sub-classifications that reflect network tiers, if the tiering is based on reasonable factors determined in accordance with the rules in paragraph (c)(4) of this section (such as quality, performance, and market standards) and without regard to whether a provider provides services with respect to medical/surgical benefits or mental health or substance use disorder benefits. After the sub-classifications are established, the plan may not impose any financial requirement or treatment limitation on mental health or substance use disorder benefits in any sub-classification that is more restrictive than the predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in the sub-classification using the methodology set forth in paragraph (c)(3)(i) of this section.

* * * * *

(iv) *Examples.* The rules of paragraphs (c)(3)(i) through (iii) of this section are illustrated by the following examples. In each example, the group health plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits.

(A) *Example 1*—(*1*) *Facts.* (*i*) For inpatient, out-of-network medical/surgical benefits, a group health plan imposes five levels of coinsurance. Using a reasonable method, the plan projects its payments for the upcoming year as follows:

TABLE 1 TO PARAGRAPH (c)(3)(IV)(A)(*1*)(*i*)

Coinsurance rate	0%	10%	15%	20%	30%	Total
Projected payments	$200x	$100x	$450x	$100x	$150x	$1,000x
Percent of total plan costs	20	10	45	10	15	.....
Percent subject to coinsurance level	N/A	12.5 (100x/800x)	56.25 (450x/800x)	12.5 (100x/800x)	18.75 (150x/800x)	.....

(*ii*) The plan projects plan costs of $800x to be subject to coinsurance ($100x + $450x + $100x + $150x = $800x). Thus, 80 percent ($800x/$1,000x) of the benefits are projected to be subject to coinsurance, and 56.25 percent of the benefits subject to coinsurance are projected to be subject to the 15 percent coinsurance level.

(*2*) *Conclusion.* In this paragraph (c)(3)(iv)(A) (*Example 1*), the two-thirds threshold of the substantially all standard is met for coinsurance because 80 percent of all inpatient, out-of-network medical/surgical benefits are subject to coinsurance. Moreover, the 15 percent coinsurance is the predominant level because it is applicable to more than one-half of inpatient, out-of-network medical/surgical benefits subject to the coinsurance requirement. The plan may not impose any level of coinsurance with respect to inpatient, out-of-network mental health or substance use disorder benefits that is more restrictive than the 15 percent level of coinsurance.

(B) *Example 2*—(*1*) *Facts.* (*i*) For outpatient, in-network medical/surgical

benefits, a plan imposes five different copayment levels. Using a reasonable method, the plan projects payments for the upcoming year as follows:

TABLE 2 TO PARAGRAPH (c)(3)(IV)(B)(*1*)(*i*)

Copayment amount	$0	$10	$15	$20	$50	Total
Projected payments	$200x	$200x	$200x	$300x	$100x	$1,000x
Percent of total plan costs	20	20	20	30	10	
Percent subject to copayments	N/A	25 (200x/800x)	25 (200x/800x)	37.5 (300x/800x)	12.5 (100x/800x)	

(*ii*) The plan projects plan costs of $800x to be subject to copayments ($200x + $200x +$300x + $100x = $800x). Thus, 80 percent ($800x/$1,000x) of the benefits are projected to be subject to a copayment.

(*2*) *Conclusion.* In this paragraph (c)(3)(iv)(B) (*Example 2*), the two-thirds threshold of the substantially all standard is met for copayments because 80 percent of all outpatient, in-network medical/surgical benefits are subject to a copayment. Moreover, there is no single level that applies to more than one-half of medical/surgical benefits in the classification subject to a copayment (for the $10 copayment, 25%; for the $15 copayment, 25%; for the $20 copayment, 37.5%; and for the $50 copayment, 12.5%). The plan can combine any levels of copayment, including the highest levels, to determine the predominant level that can be applied to mental health or substance use disorder benefits. If the plan combines the highest levels of copayment, the combined projected payments for the two highest copayment levels, the $50 copayment and the $20 copayment, are not more than one-half of the outpatient, in-network medical/surgical benefits subject to a copayment because they are exactly one-half ($300x + $100x = $400x; $400x/$800x = 50%). The combined projected payments for the three highest copayment levels—the $50 copayment, the $20 copayment, and the $15 copayment—are more than one-half of the outpatient, in-network medical/surgical benefits subject to the copayments ($100x + $300x + $200x = $600x; $600x/$800x = 75%). Thus, the plan may not impose any copayment on outpatient, in-network mental health or substance use disorder benefits that is more restrictive than the least restrictive copayment in the combination, the $15 copayment.

(C) *Example 3*—(*1*) *Facts.* A plan imposes a $250 deductible on all medical/surgical benefits for self-only coverage and a $500 deductible on all medical/surgical benefits for family coverage. The plan has no network of providers. For all medical/surgical benefits, the plan imposes a coinsurance requirement. The plan imposes no other financial requirements or treatment limitations.

(*2*) *Conclusion.* In this paragraph (c)(3)(iv)(C) (*Example 3*), because the plan has no network of providers, all benefits are provided out-of-network. Because self-only and family coverage are subject to different deductibles, whether the deductible applies to substantially all medical/surgical benefits is determined separately for self-only medical/surgical benefits and family medical/surgical benefits. Because the coinsurance is applied without regard to coverage units, the predominant coinsurance that applies to substantially all medical/surgical benefits is determined without regard to coverage units.

(D) *Example 4*—(*1*) *Facts.* A plan applies the following financial requirements for prescription drug benefits. The requirements are applied without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits. Moreover, the process for certifying a particular drug as ''generic'', ''preferred brand name'', ''non-preferred brand name'', or ''specialty'' complies with the rules of paragraph (c)(4) of this section (relating to requirements for nonquantitative treatment limitations).

TABLE 3 TO PARAGRAPH (c)(3)(iv)(D)(*1*)

	Tier 1	Tier 2	Tier 3	Tier 4
Tier description	Generic drugs	Preferred brand name drugs.	Non-preferred brand name drugs (which may have Tier 1 or Tier 2 alternatives).	Specialty drugs.
Percent paid by plan	90	80	60	50.

(*2*) *Conclusion.* In this paragraph (c)(3)(iv)(D) (*Example 4*), the financial requirements that apply to prescription drug benefits are applied without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits; the process for certifying drugs in different tiers complies with paragraph (c)(4) of this section; and the bases for establishing different levels or types of financial requirements are reasonable. The financial requirements applied to prescription drug benefits do not violate the parity requirements of this paragraph (c)(3).

(E) *Example 5*—(*1*) *Facts.* A plan has two-tiers of network of providers: a preferred provider tier and a participating provider tier. Providers are placed in either the preferred tier or participating tier based on reasonable factors determined in accordance with the rules in paragraph (c)(4) of this section, such as accreditation, quality and performance measures (including customer feedback), and relative reimbursement rates. Furthermore, provider tier placement is determined without regard to whether a provider specializes in the treatment of mental health conditions or substance use disorders, or medical/surgical conditions. The plan divides the in-network classifications into two sub-classifications (in-network/preferred and in-network/participating). The plan does not impose any financial requirement or treatment limitation on mental health or substance use disorder benefits in either of these sub-

classifications that is more restrictive than the predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in each sub-classification.

(*2*) *Conclusion.* In this paragraph (c)(3)(iv)(E) (*Example 5*), the division of in-network benefits into sub-classifications that reflect the preferred and participating provider tiers does not violate the parity requirements of this paragraph (c)(3).

(F) *Example 6*—(*1*) *Facts.* With respect to outpatient, in-network benefits, a plan imposes a $25 copayment for office visits and a 20 percent coinsurance requirement for outpatient surgery. The plan divides the outpatient, in-network classification into two sub-classifications (in-network office visits and all other outpatient, in-network items and services). The plan does not impose any financial requirement or quantitative treatment limitation on mental health or substance use disorder benefits in either of these sub-classifications that is more restrictive than the predominant financial requirement or quantitative treatment limitation that applies to substantially all medical/surgical benefits in each sub-classification.

(*2*) *Conclusion.* In this paragraph (c)(3)(iv)(F) (*Example 6*), the division of outpatient, in-network benefits into sub-classifications for office visits and all other outpatient, in-network items and services does not violate the parity requirements of this paragraph (c)(3).

(G) *Example 7*—(*1*) *Facts.* Same facts as in paragraph (c)(3)(iv)(F)(*1*) of this section (*Example 6*), but for purposes of determining parity, the plan divides the outpatient, in-network classification into outpatient, in-network generalists and outpatient, in-network specialists.

(*2*) *Conclusion.* In this paragraph (c)(3)(iv)(G) (*Example 7*), the division of outpatient, in-network benefits into any sub-classifications other than office visits and all other outpatient items and services violates the requirements of paragraph (c)(3)(iii)(C) of this section.

* * * * *

(4) *Nonquantitative treatment limitations.* Subject to paragraph (c)(4)(v) of this section, a group health plan may not impose a nonquantitative treatment limitation with respect to mental health or substance use disorder benefits in a classification unless the plan's imposition of the limitation meets the requirements of paragraphs (c)(4)(i), (ii), and (iv) of this section. If a group health plan fails to meet any of these requirements with respect to a nonquantitative treatment limitation, the limitation violates Code section 9812(a)(3)(A)(ii) and may not be imposed by the plan.

(i) *Requirement that nonquantitative treatment limitations be no more restrictive for mental health benefits and substance use disorder benefits.* A group health plan may not apply any nonquantitative treatment limitation with respect to mental health or substance use disorder benefits in any classification that is more restrictive, as written or in operation, than the predominant nonquantitative treatment limitation applied to substantially all medical/surgical benefits in the same classification.

(A) *Restrictive.* For purposes of this paragraph (c)(4)(i), a nonquantitative treatment limitation is restrictive to the extent it imposes conditions, terms, or requirements that limit access to benefits under the terms of the plan. Conditions, terms, or requirements include, but are not limited to, those that compel an action by or on behalf of a participant or beneficiary to access benefits or limit access to the full range of treatment options available for a condition or disorder under the plan.

(B) *Substantially all.* For purposes of this paragraph (c)(4)(i), a nonquantitative treatment limitation is considered to apply to substantially all medical/surgical benefits in a classification if it applies to at least two-thirds of all medical/surgical benefits in that classification, consistent with paragraph (c)(4)(i)(D) of this section. Whether the nonquantitative treatment limitation applies to at least two-thirds of all medical/surgical benefits is determined without regard to whether the nonquantitative treatment limitation was triggered based on a particular factor or evidentiary standard. If a nonquantitative treatment limitation does not apply to at least two-thirds of all medical/surgical benefits in a classification, then that limitation cannot be applied to mental health or substance use disorder benefits in that classification.

(C) *Predominant.* For purposes of this paragraph (c)(4)(i), the term predominant means the most common or most frequent variation of the nonquantitative treatment limitation within a classification, determined in accordance with the method outlined in paragraph (c)(4)(i)(D) of this section, to the extent the plan imposes multiple variations of a nonquantitative treatment limitation within the classification. For example, multiple variations of inpatient concurrent review include review commencing 1 day, 3 days, or 7 days after admission, depending on the reason for the stay.

(D) *Portion based on plan payments.* For purposes of paragraphs (c)(4)(i)(B) and (C) of this section, the determination of the portion of medical/surgical benefits in a classification of benefits subject to a nonquantitative treatment limitation is based on the dollar amount of all plan payments for medical/surgical benefits in the classification expected to be paid under the plan for the plan year (or the portion of the plan year after a change in benefits that affects the applicability of the nonquantitative treatment limitation). Any reasonable method may be used to determine the dollar amount expected to be paid under a plan for medical/surgical benefits.

(E) *Exceptions for independent professional medical or clinical standards and standards to detect or prevent and prove fraud, waste, and abuse.* Notwithstanding paragraphs (c)(4)(i)(A) through (D) of this section, a plan that applies a nonquantitative treatment limitation that impartially applies independent professional medical or clinical standards or applies standards to detect or prevent and prove fraud, waste, and abuse, as described in paragraph (c)(4)(v)(A) or (B) of this section, to mental health or substance use disorder benefits in any classification will not be considered to violate this paragraph (c)(4)(i) with respect to such nonquantitative treatment limitation.

(ii) *Additional requirements related to design and application of the nonquantitative treatment limitation*—(A) *In general.* Consistent with paragraph (a)(1) of this section, a plan may not impose a nonquantitative treatment limitation with respect to mental health or substance use disorder benefits in any classification unless, under the terms of the plan as written and in operation, any processes, strategies, evidentiary standards, or other factors used in designing and applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in designing and applying the limitation with respect to medical/surgical benefits in the classification.

(B) *Prohibition on discriminatory factors and evidentiary standards.* For purposes of determining comparability and stringency under paragraph (c)(4)(ii)(A) of this section, a plan may not rely upon any factor or evidentiary standard if the information, evidence, sources, or standards on which the factor or evidentiary standard is based

discriminates against mental health or substance use disorder benefits as compared to medical/surgical benefits. For purposes of this paragraph (c)(4)(ii)(B):

(*1*) Impartially applied generally recognized independent professional medical or clinical standards described in paragraph (c)(4)(v)(A) of this section are not considered to discriminate against mental health or substance use disorder benefits.

(*2*) Standards reasonably designed to detect or prevent and prove fraud, waste, and abuse described in paragraph (c)(4)(v)(B) of this section are not considered to discriminate against mental health or substance use disorder benefits.

(*3*) Information is considered to discriminate against mental health or substance use disorder benefits if it is biased or not objective, in a manner that results in less favorable treatment of mental health or substance use disorder benefits, based on all the relevant facts and circumstances including, but not limited to, the source of the information, the purpose or context of the information, and the content of the information.

(iii) *Illustrative, non-exhaustive list of nonquantitative treatment limitations.* Nonquantitative treatment limitations include—

(A) Medical management standards (such as prior authorization) limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative;

(B) Formulary design for prescription drugs;

(C) For plans with multiple network tiers (such as preferred providers and participating providers), network tier design;

(D) Standards related to network composition, including but not limited to, standards for provider and facility admission to participate in a network or for continued network participation, including methods for determining reimbursement rates, credentialing standards, and procedures for ensuring the network includes an adequate number of each category of provider and facility to provide services under the plan;

(E) Plan methods for determining out-of-network rates, such as allowed amounts; usual, customary, and reasonable charges; or application of other external benchmarks for out-of-network rates;

(F) Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols);

(G) Exclusions based on failure to complete a course of treatment; and

(H) Restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the plan.

(iv) *Required use of outcomes data*—(A) *In general.* When designing and applying a nonquantitative treatment limitation, a plan must collect and evaluate relevant data in a manner reasonably designed to assess the impact of the nonquantitative treatment limitation on access to mental health and substance use disorder benefits and medical/surgical benefits, and consider the impact as part of the plan's analysis of whether the limitation, in operation, complies with paragraphs (c)(4)(i) and (ii) of this section. The Secretary, jointly with the Secretary of the Department of Labor and the Secretary of Health and Human Services, may specify in guidance the type, form, and manner of collection and evaluation for the data required under this paragraph (c)(4)(iv)(A).

(*1*) For purposes of this paragraph (c)(4)(iv)(A), relevant data includes, but is not limited to, the number and percentage of claims denials and any other data relevant to the nonquantitative treatment limitation required by State law or private accreditation standards.

(*2*) In addition to the relevant data set forth in paragraph (c)(4)(iv)(A)(*1*) of this section, relevant data for nonquantitative treatment limitations related to network composition standards includes, but is not limited to, in-network and out-of-network utilization rates (including data related to provider claim submissions), network adequacy metrics (including time and distance data, and data on providers accepting new patients), and provider reimbursement rates (including as compared to billed charges).

(B) *Material differences.* Subject to paragraph (c)(4)(iv)(C) of this section, to the extent the relevant data evaluated pursuant to paragraph (c)(4)(iv)(A) of this section show material differences in access to mental health and substance use disorder benefits as compared to medical/surgical benefits, the differences will be considered a strong indicator that the plan violates paragraph (c)(4)(i) or (ii) of this section. In such instances, the plan:

(*1*) Must take reasonable action to address the material differences in access as necessary to ensure compliance, in operation, with paragraphs (c)(4)(i) and (ii) of this section; and

(*2*) Must document the action that has been or is being taken by the plan to mitigate any material differences in access to mental health and substance use disorder benefits as compared to medical/surgical benefits, as required by § 54.9812–2(c)(5)(iv).

(C) *Special rule for nonquantitative treatment limitations related to network composition.* Notwithstanding paragraph (c)(4)(iv)(B) of this section, when designing and applying one or more nonquantitative treatment limitation(s) related to network composition standards, a plan fails to meet the requirements of paragraphs (c)(4)(i) and (ii) of this section, in operation, if the relevant data show material differences in access to in-network mental health and substance use disorder benefits as compared to in-network medical/surgical benefits in a classification.

(D) *Exception for independent professional medical or clinical standards.* A plan designing and applying a nonquantitative treatment limitation with respect to mental health or substance use disorder benefits in any classification that impartially applies independent professional medical or clinical standards, as described in paragraph (c)(4)(v)(A) of this section, is not required to comply with the requirements of this paragraph (c)(4)(iv) with respect to that classification.

(v) *Independent professional medical or clinical standards and standards to detect or prevent and prove fraud, waste, and abuse.* (A) To qualify for the exceptions in paragraphs (c)(4)(i)(E), (c)(4)(ii)(B), and (c)(4)(iv)(D) of this section for independent professional medical or clinical standards, a nonquantitative treatment limitation must impartially apply generally recognized independent professional medical or clinical standards (consistent with generally accepted standards of care) to medical/surgical benefits and mental health or substance use disorder benefits, and may not deviate from those standards in any way, such as by imposing additional or different requirements.

(B) To qualify for the exceptions in paragraphs (c)(4)(i)(E) and (c)(4)(ii)(B) of this section to detect or prevent and prove fraud, waste, and abuse, a nonquantitative treatment limitation must be reasonably designed to detect or prevent and prove fraud, waste, and abuse, based on indicia of fraud, waste, and abuse that have been reliably established through objective and unbiased data, and also be narrowly

designed to minimize the negative impact on access to appropriate mental health and substance use disorder benefits.

(vi) *Prohibition on separate nonquantitative treatment limitations applicable only to mental health or substance use disorder benefits.* Consistent with paragraph (c)(2)(i) of this section, a group health plan may not apply any nonquantitative treatment limitation that is applicable only with respect to mental health or substance use disorder benefits and does not apply with respect to any medical/surgical benefits in the same benefit classification.

(vii) *Effect of final determination of noncompliance under § 54.9812–2.* If a group health plan receives a final determination from the Secretary that the plan is not in compliance with the requirements of § 54.9812–2 with respect to a nonquantitative treatment limitation, the nonquantitative treatment limitation violates this paragraph (c)(4) and the Secretary may direct the plan not to impose the nonquantitative treatment limitation, unless and until the plan demonstrates to the Secretary compliance with the requirements of this section or takes appropriate action to remedy the violation.

(viii) *Examples.* The rules of this paragraph (c)(4) are illustrated by the following examples. In each example, the group health plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits. Additionally, in examples that conclude that the plan violates one provision of this paragraph (c)(4), such examples do not necessarily imply compliance with other provisions of this paragraph (c)(4), as these examples do not analyze compliance with all other provisions of this paragraph (c)(4).

(A) *Example 1 (More restrictive prior authorization requirement in operation)*—(*1*) *Facts.* A plan requires prior authorization from the plan's utilization reviewer that a treatment is medically necessary for all inpatient, in-network medical/surgical benefits and for all inpatient, in-network mental health and substance use disorder benefits. While inpatient, in-network benefits for medical/surgical conditions are approved for periods of 1, 3, and 7 days, after which a treatment plan must be submitted by the patient's attending provider and approved by the plan, the approvals for 7 days are most common under this plan. For inpatient, in-network mental health and substance use disorder benefits, routine approval is most commonly given only for one day, after which a treatment plan must be submitted by the patient's attending provider and approved by the plan. The difference in the duration of approvals is not the result of independent professional medical or clinical standards or standards to detect or prevent and prove fraud, waste, and abuse, but rather reflects the application of a heightened standard to the provision of the mental health and substance use disorder benefits in the relevant classification.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(A) (*Example 1*), the plan violates the rules of paragraph (c)(4)(i) of this section. Under the terms of the plan, prior authorization applies to at least two-thirds of all medical/surgical benefits in the relevant classification (inpatient, in-network), since it applies to all benefits in the relevant classification. Further, the most common or frequent variation of the nonquantitative treatment limitation applied to medical/surgical benefits in the relevant classification (the predominant nonquantitative treatment limitation) is the routine approval of inpatient, in-network benefits for 7 days before the patient's attending provider must submit a treatment plan. However, the plan routinely approves inpatient, in-network benefits for mental health and substance use disorder conditions for only 1 day before the patient's attending provider must submit a treatment plan (and, in doing so, does not impartially apply independent professional medical or clinical standards or apply standards to detect or prevent and prove fraud, waste, and abuse that qualify for the exceptions in paragraph (c)(4)(i)(E) of this section). In operation, therefore, the prior authorization requirement imposed on inpatient, in-network mental health and substance use disorder benefits is more restrictive than the predominant prior authorization requirement applicable to substantially all medical/surgical benefits in the inpatient, in-network classification because the practice of approving only 1 day of inpatient benefits limits access to the full range of treatment options available for a condition or disorder under the plan as compared to the routine 7-day approval that is given for inpatient, in-network medical/surgical benefits. Because the plan violates the rules of paragraph (c)(4)(i) of this section, this example does not analyze compliance with paragraph (c)(4)(ii) or (iv) of this section.

(B) *Example 2 (More restrictive peer-to-peer concurrent review requirements in operation)*—(*1*) *Facts.* A plan follows a written process for the concurrent review of all medical/surgical benefits and mental health and substance use disorder benefits within the inpatient, in-network classification. Under the process, a first-level review is conducted in every instance in which concurrent review applies and an authorization request is approved by the first-level reviewer only if the clinical information submitted by the facility meets the plan's criteria for a continued stay. If the first-level reviewer is unable to approve the authorization request because the clinical information submitted by the facility does not meet the plan's criteria for a continued stay, it is sent to a second-level reviewer who will either approve or deny the request. While the written process only requires review by the second-level reviewer to either deny or approve the request, in operation, second-level reviewers for mental health and substance use disorder benefits conduct a peer-to-peer review with a provider (acting as the authorized representative of a participant or beneficiary) before coverage of the treatment is approved. The peer-to-peer review requirement is not the result of independent professional medical or clinical standards or standards to detect or prevent and prove fraud, waste, and abuse. The plan does not impose a peer-to-peer review, as written or in operation, as part of the second-level review for medical/surgical benefits.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(B) (*Example 2*), the plan violates the rules of paragraph (c)(4)(i) of this section. The concurrent review nonquantitative treatment limitation applies to at least two-thirds of all medical/surgical benefits within the inpatient, in-network classification because the plan follows the concurrent review process for all medical/surgical benefits. The most common or frequent variation of this nonquantitative treatment limitation (the predominant nonquantitative treatment limitation) applicable to substantially all medical/surgical benefits is that peer-to-peer review is not imposed as part of second-level review. The plan does not impartially apply independent professional medical or clinical standards or apply standards to detect or prevent and prove fraud, waste, and abuse that qualify for the exceptions in paragraph (c)(4)(i)(E) of this section. As written, the plan's concurrent review requirements are the same for medical/surgical benefits and mental health and substance use disorder benefits. However, in operation, by compelling an additional action (peer-to-peer review as part of second-level review) to

access only mental health or substance use disorder benefits, the plan applies the limitation to mental health and substance use disorder benefits in a manner that is more restrictive than the predominant nonquantitative treatment limitation applied to substantially all medical/surgical benefits in the inpatient, in-network classification. Because the plan violates the rules of paragraph (c)(4)(i) of this section, this example does not analyze compliance with paragraph (c)(4)(ii) or (iv) of this section.

(C) *Example 3 (More restrictive peer-to-peer review medical necessity standard in operation; deviation from independent professional medical and clinical standards)*—(*1*) *Facts.* A plan generally requires that all treatment be medically necessary in the inpatient, out-of-network classification. For both medical/surgical benefits and mental health and substance use disorder benefits, the written medical necessity standards are based on independent professional medical or clinical standards that do not require peer-to-peer review. In operation, the plan covers out-of-network benefits for medical/surgical or mental health inpatient treatment outside of a hospital if the physician documents medical appropriateness, but for out-of-network benefits for substance use disorder inpatient treatment outside of a hospital, the plan requires a physician to also complete peer-to-peer review.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(C) (*Example 3*), the plan violates the rules of paragraph (c)(4)(i) of this section. The medical necessity nonquantitative treatment limitation applies to at least two-thirds of all medical/surgical benefits in the inpatient, out-of-network classification. The most common or frequent variation of the nonquantitative treatment limitation (the predominant nonquantitative treatment limitation) applicable to substantially all medical/surgical benefits is the requirement that a physician document medical appropriateness without peer-to-peer review. The plan purports to impartially apply independent professional medical or clinical standards that would otherwise qualify for the exception in paragraph (c)(4)(i)(E) of this section, but deviates from those standards by imposing the additional requirement to complete peer-to-peer review for inpatient, out-of-network benefits for substance use disorder outside of a hospital. Therefore, the exception in paragraph (c)(4)(i)(E) of this section does not apply. As written, the plan provisions apply the nonquantitative treatment limitation to mental health and substance use disorder benefits in the inpatient, out-of-network classification in the same manner as for medical/surgical benefits. However, in operation, the nonquantitative treatment limitation imposed with respect to out-of-network substance use disorder benefits for treatment outside of a hospital is more restrictive than the predominant nonquantitative treatment limitation applied to substantially all medical/surgical benefits in the classification because it limits access to the full range of treatment options available for a condition or disorder under the plan or coverage as compared to medical/surgical benefits in the same classification. Because the plan violates the rules of paragraph (c)(4)(i) of this section, this example does not analyze compliance with paragraph (c)(4)(ii) or (iv) of this section.

(D) *Example 4 (Not comparable and more stringent methods for determining reimbursement rates in operation)*—(*1*) *Facts.* A plan's base reimbursement rates for outpatient, in-network providers are determined based on a variety of factors, including the providers' required training, licensure, and expertise. For purposes of this example, the plan's nonquantitative treatment limitations for determining reimbursement rates for mental health and substance use disorder benefits are not more restrictive than the predominant nonquantitative treatment limitation applied to substantially all medical/surgical benefits in the classification under paragraph (c)(4)(i) of this section. As written, for mental health, substance use disorder, and medical/surgical benefits, all reimbursement rates for physicians and non-physician practitioners for the same Current Procedural Terminology (CPT) code vary based on a combination of factors, such as the nature of the service, provider type, number of providers qualified to provide the service in a given geographic area, and market need (demand). As a result, reimbursement rates for mental health, substance use disorder, and medical/surgical benefits furnished by non-physician providers are generally less than for physician providers. In operation, the plan reduces the reimbursement rate for mental health and substance use disorder non-physician providers from that paid to mental health and substance use disorder physicians by the same percentage for every CPT code but does not apply the same reductions for non-physician medical/surgical providers.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(D) (*Example 4*), the plan violates the rules of paragraph (c)(4)(ii) of this section. Because the plan reimburses non-physician providers of mental health and substance use disorder services by reducing their reimbursement rate from the rate to physician providers by the same percentage for every CPT code but does not apply the same reductions to non-physician providers of medical/surgical services, in operation, the factors used in applying the nonquantitative treatment limitation to mental health and substance use disorder benefits are not comparable to, and are applied more stringently than, the factors used in applying the limitation with respect to medical/surgical benefits. Because the facts assume that the plan's methods for determining reimbursement rates comply with paragraph (c)(4)(i) of this section and the plan violates the rules of paragraph (c)(4)(ii) of this section, this example does not analyze compliance with paragraph (c)(4)(iv) of this section.

(E) *Example 5 (Exception for impartially applied generally recognized independent professional medical or clinical standards)*—(*1*) *Facts.* A group health plan develops a medical management requirement for all inpatient, out-of-network benefits for both medical/surgical benefits and mental health and substance use disorder benefits to ensure treatment is medically necessary. The medical management requirement impartially applies independent professional medical or clinical standards in a manner that qualifies for the exception in paragraph (c)(4)(i)(E) of this section. The plan does not rely on any other factors or evidentiary standards and the processes, strategies, evidentiary standards, and other factors used in designing and applying the medical management requirement to mental health and substance use disorder benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, and other factors used in designing and applying the requirement with respect to medical/surgical benefits. Within the inpatient, out-of-network classification, the application of the medical management requirement results in a higher percentage of denials for mental health and substance use disorder claims than medical/surgical claims, because the benefits were found to be medically necessary for a lower percentage of mental health and substance use disorder claims based on the impartial application of the independent professional medical or clinical standards by the nonquantitative treatment limitation.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(E) (*Example 5*), the plan does

not violate the rules of this paragraph (c)(4). The medical management nonquantitative treatment limitation imposed on mental health and substance use disorder benefits does not violate paragraph (c)(4)(i) or (iv) of this section because it impartially applies independent professional medical or clinical standards for both medical/surgical benefits and mental health and substance use disorder benefits in a manner that qualifies for the exceptions in paragraphs (c)(4)(i)(E) and (c)(4)(iv)(D) of this section, respectively. Moreover, the nonquantitative treatment limitation does not violate paragraph (c)(4)(ii) of this section because the independent professional medical or clinical standards are not considered to be a discriminatory factor or evidentiary standard under paragraph (c)(4)(ii)(B) of this section. Additionally, as written and in operation, the processes, strategies, evidentiary standards, and other factors used in designing and applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in the inpatient, out-of-network classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, and other factors used in applying the limitation with respect to medical/surgical benefits in the classification, regardless of the fact that the application of the nonquantitative treatment limitation resulted in higher percentages of claim denials for mental health and substance use disorder benefits as compared to medical/surgical benefits.

(F) *Example 6 (More restrictive prior authorization requirement; exception for impartially applied generally recognized independent professional medical or clinical standards not met)*—(*1*) *Facts.* The provisions of a plan state that it applies independent professional medical and clinical standards (consistent with generally accepted standards of care) for setting prior authorization requirements for both medical/surgical and mental health and substance use disorder prescription drugs. The relevant generally recognized independent professional medical standard for treatment of opioid use disorder that the plan utilizes—in this case, the American Society of Addiction Medicine national practice guidelines—does not support prior authorization every 30 days for buprenorphine/naloxone. However, in operation, the plan requires prior authorization for buprenorphine/naloxone combination at each refill (every 30 days) for treatment of opioid use disorder.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(F) (*Example 6*), the plan violates the rules of paragraph (c)(4)(i) of this section. The plan does not qualify for the exception in paragraph (c)(4)(i)(E) of this section, because, although the provisions of the plan state that it applies independent professional medical and clinical standards, the plan deviates from the relevant standards with respect to prescription drugs to treat opioid use disorder. The prior authorization nonquantitative treatment limitation is applied to at least two-thirds of all medical/surgical benefits in the prescription drugs classification. The most common or frequent variation of this nonquantitative treatment limitation (the predominant nonquantitative treatment limitation) applicable to substantially all medical/surgical benefits is following generally recognized independent professional medical and clinical standards (consistent with generally accepted standards of care). The prior authorization requirements imposed on substance use disorder benefits are more restrictive than the predominant nonquantitative treatment limitation applicable to substantially all medical/surgical benefits in the classification, because the plan imposes additional requirements on substance use disorder benefits that limit access to the full range of treatment options available for a condition or disorder under the plan as compared to medical/surgical benefits in the same classification. Because the plan violates the rules of paragraph (c)(4)(i) of this section, this example does not analyze compliance with paragraph (c)(4)(ii) or (iv) of this section.

(G) *Example 7 (Impermissible nonquantitative treatment limitation imposed following a final determination of noncompliance and direction by the Secretary)*—(*1*) *Facts.* Following an initial request by the Secretary for a plan's comparative analysis of a nonquantitative treatment limitation pursuant to § 54.9812–2(d), the plan submits a comparative analysis for the nonquantitative treatment limitation. After review of the comparative analysis, the Secretary makes an initial determination that the comparative analysis fails to demonstrate that the processes, strategies, evidentiary standards, and other factors used in designing and applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in the relevant classification are comparable to, and applied no more stringently than, those used in designing and applying the limitation to medical/surgical benefits in the classification. Pursuant to § 54.9812–2(d)(3), the plan submits a corrective action plan and additional comparative analyses within 45 calendar days after the initial determination, and the Secretary then determines that the additional comparative analyses do not demonstrate compliance with the requirements of this paragraph (c)(4). The plan receives a final determination of noncompliance from the Secretary, which informs the plan that it is not in compliance with this paragraph (c)(4) and directs the plan not to impose the nonquantitative treatment limitation by a certain date, unless and until the plan demonstrates compliance to the Secretary or takes appropriate action to remedy the violation. The plan makes no changes to its plan terms by that date and continues to impose the nonquantitative treatment limitation.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(G) (*Example 7*), the plan violates the requirements of this paragraph (c)(4) by imposing the nonquantitative treatment limitation after the Secretary directs the plan not to impose it, pursuant to paragraph (c)(4)(vii) of this section.

(H) *Example 8 (Provider network admission standards not more restrictive and compliant with requirements for design and application of NQTLs)*—(*1*) *Facts.* As part of a plan's standards for provider admission to its network, in the outpatient, in-network classification, any provider seeking to contract with the plan must have a certain number of years of supervised clinical experience. As a result of that standard, master's level mental health therapists are required to obtain supervised clinical experience beyond their licensure, while master's level medical/surgical providers, psychiatrists, and Ph.D.-level psychologists do not require additional experience beyond their licensure because their licensure already requires supervised clinical experience. The plan collects and evaluates relevant data in a manner reasonably designed to assess the impact of the nonquantitative treatment limitation. This includes in-network and out-of-network utilization rates (including data related to provider claim submissions), network adequacy metrics (including time and distance data, and data on providers accepting new patients), and provider reimbursement rates (including as compared to billed charges). This data demonstrates that participants and beneficiaries seeking outpatient care are able to access outpatient, in-network mental health and substance use disorder providers at the same

frequency as outpatient, in-network medical/surgical providers, that mental health and substance use disorder providers are active in the network and are accepting new patients to the same extent as medical/surgical providers, and that mental health and substance use disorder providers are within similar time and distances to plan participants and beneficiaries as are medical/surgical providers. This data also does not identify material differences in what the plan pays psychiatrists or non-physician mental health providers, compared to physicians or non-physician medical/surgical providers, respectively, both for the same reimbursement codes and as compared to Medicare rates.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(H) (*Example 8*), the plan does not violate this paragraph (c)(4). The standards for this nonquantitative treatment limitation, namely provider admission to the plan's network, are applied to at least two-thirds of all medical/surgical benefits in the outpatient, in-network classification, as it applies to all medical/surgical benefits in the classification. The most common or frequent variation of this nonquantitative treatment limitation (the predominant nonquantitative treatment limitation) that applies to substantially all medical/surgical benefits in the classification is having a certain number of years of supervised clinical experience. The standards for provider admission to the plan's network that are imposed with respect to mental health or substance use disorder benefits are no more restrictive, as written or in operation, than the predominant variation of the nonquantitative treatment limitation applicable to substantially all medical/surgical benefits in the classification, because the standards do not limit access to the full range of treatment options available for a condition or disorder under the plan as compared to medical/surgical benefits in the same classification. The requirement that providers have a certain number of years of supervised clinical experience that the plan relied upon to design and apply the nonquantitative treatment limitation is not considered to discriminate against mental health or substance use disorder benefits, even though this results in the requirement that master's level mental health therapists obtain supervised clinical experience beyond their licensure, unlike master's level medical/surgical providers. In addition, as written and in operation, the processes, strategies, evidentiary standards, or other factors used in applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical/surgical benefits in the classification, because the plan applies the same standard to all providers in the classification. Finally, the plan collects and evaluates relevant data in a manner reasonably designed to assess the impact of the nonquantitative treatment limitation on access to mental health and substance use disorder benefits, which does not show material differences in access to in-network mental health and substance use disorder benefits as compared to in-network medical/surgical benefits in the classification.

(I) *Example 9 (More restrictive requirement for primary caregiver participation applied to ABA therapy)*—(*1*) *Facts.* A plan generally applies medical necessity criteria in adjudicating claims for coverage of all outpatient, in-network medical/surgical and mental health and substance use disorder benefits, including ABA therapy for the treatment of ASD, which is a mental health condition. The plan's medical necessity criteria for coverage of ABA therapy requires evidence that the participant's or beneficiary's primary caregivers actively participate in ABA therapy, as documented by consistent attendance in parent, caregiver, or guardian training sessions. In adding this requirement, the plan deviates from independent professional medical or clinical standards, and there are no similar medical necessity criteria requiring evidence of primary caregiver participation in order to receive coverage of any medical/surgical benefits.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(I) (*Example 9*), the plan violates paragraph (c)(4)(i) of this section. The plan applies medical necessity criteria to at least two-thirds of all outpatient, in-network medical/surgical benefits, as they apply to all medical/surgical benefits in the classification. The most common or frequent variation of this nonquantitative treatment limitation (the predominant nonquantitative treatment limitation) that applies to substantially all medical/surgical benefits in the classification does not include the requirement to provide evidence that the participant's or beneficiary's primary caregivers actively participate in the treatment. The plan does not qualify for the exception in paragraph (c)(4)(i)(E) of this section in applying its restriction on coverage for ABA therapy because the plan deviates from the independent professional medical or clinical standards by imposing a different requirement. As a result, the nonquantitative treatment limitation imposed on mental health and substance use disorder benefits is more restrictive than the predominant medical necessity requirement imposed on substantially all medical/surgical benefits in the classification (which does not include the requirement to provide evidence that primary caregivers actively participate in treatment). Because the plan violates the rules of paragraph (c)(4)(i) of this section, this example does not analyze compliance with paragraph (c)(4)(ii) or (iv) of this section.

(J) *Example 10 (More restrictive exclusion for experimental or investigative treatment applied to ABA therapy)*—(*1*) *Facts.* A plan, as written, generally excludes coverage for all treatments that are experimental or investigative for both medical/surgical benefits and mental health and substance use disorder benefits in the outpatient, in-network classification. As a result, the plan generally excludes experimental treatment of medical conditions and surgical procedures, mental health conditions, and substance use disorders when no professionally recognized treatment guidelines define clinically appropriate standards of care for the condition or disorder and fewer than two randomized controlled trials are available to support the treatment's use with respect to the given condition or disorder. The plan provides benefits for the treatment of ASD, which is a mental health condition, but, in operation, the plan excludes coverage for ABA therapy to treat children with ASD, deeming it experimental. More than one professionally recognized treatment guideline defines clinically appropriate standards of care for ASD and more than two randomized controlled trials are available to support the use of ABA therapy to treat certain children with ASD.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(J) (*Example 10*), the plan violates the rules of paragraph (c)(4)(i) of this section. The coverage exclusion for experimental or investigative treatment applies to at least two-thirds of all medical/surgical benefits, as it applies to all medical/surgical benefits in the outpatient, in-network classification. The most common or frequent variation of this nonquantitative treatment limitation in the classification (the predominant nonquantitative treatment limitation)

applicable to substantially all medical/surgical benefits is the exclusion under the plan for coverage of experimental treatment of medical/surgical conditions when no professionally recognized treatment guidelines define clinically appropriate standards of care for the condition or disorder and fewer than two randomized controlled trials are available to support the treatment's use with respect to the given condition or procedure. In operation, the exclusion for experimental or investigative treatment imposed on ABA therapy is more restrictive than the predominant variation of the nonquantitative treatment limitation for experimental or investigative treatment imposed on substantially all medical/surgical benefits in the classification because the exclusion limits access to the full range of treatment options available for a condition or disorder under the plan as compared to medical/surgical benefits in the same classification. Because the plan violates the rules of paragraph (c)(4)(i) of this section, this example does not analyze compliance with paragraph (c)(4)(ii) or (iv) of this section.

(K) *Example 11 (Separate EAP exhaustion treatment limitation applicable only to mental health benefits)*—(*1*) *Facts.* An employer maintains both a major medical plan and an employee assistance program (EAP). The EAP provides, among other benefits, a limited number of mental health or substance use disorder counseling sessions, which, together with other benefits provided by the EAP, are not significant benefits in the nature of medical care. Participants are eligible for mental health or substance use disorder benefits under the major medical plan only after exhausting the counseling sessions provided by the EAP. No similar exhaustion requirement applies with respect to medical/surgical benefits provided under the major medical plan.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(K) (*Example 11*), limiting eligibility for mental health and substance use disorder benefits under the major medical plan until EAP benefits are exhausted is a nonquantitative treatment limitation subject to the parity requirements of this paragraph (c). Because the limitation does not apply to medical/surgical benefits, it is a separate nonquantitative treatment limitation applicable only to mental health and substance use disorder benefits that violates paragraph (c)(4)(vi) of this section. Additionally, this EAP would not qualify as excepted benefits under § 54.9831–1(c)(3)(vi)(B)(*1*) because participants in the major medical plan are required to use and exhaust benefits under the EAP (making the EAP a gatekeeper) before an individual is eligible for benefits under the plan.

(L) *Example 12 (Separate residential exclusion treatment limitation applicable only to mental health benefits)*—(*1*) *Facts.* A plan generally covers inpatient, in-network and inpatient out-of-network treatment in any setting, including skilled nursing facilities and rehabilitation hospitals, provided other medical necessity standards are satisfied. The plan also has an exclusion for residential treatment, which the plan defines as an inpatient benefit, for mental health and substance use disorder benefits. This exclusion was not generated through any broader nonquantitative treatment limitation (such as medical necessity or other clinical guideline).

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(L) (*Example 12*), the plan violates the rules of paragraph (c)(4)(vi) of this section. Because the plan does not apply a comparable exclusion to inpatient benefits for medical/surgical conditions, the exclusion of residential treatment is a separate nonquantitative treatment limitation applicable only to mental health and substance use disorder benefits in the inpatient, in-network and inpatient, out-of-network classifications that does not apply with respect to any medical/surgical benefits in the same benefit classification.

(M) *Example 13 (Standards for provider admission to a network)*—(*1*) *Facts.* A plan applies nonquantitative treatment limitations related to network composition in the outpatient in-network and inpatient, in-network classifications. The plan's networks are constructed by separate service providers for medical/surgical benefits and mental health and substance use disorder benefits. For purposes of this example, these facts assume that these nonquantitative treatment limitations related to network composition for mental health and substance use disorder benefits are not more restrictive than the predominant nonquantitative treatment limitations applied to substantially all medical/surgical benefits in the classifications under paragraph (c)(4)(i) of this section. The facts also assume that, as written and in operation, the processes, strategies, evidentiary standards, and other factors used in designing and applying the nonquantitative treatment limitations related to network access to mental health or substance use disorder benefits in the outpatient in-network and inpatient in-network classifications are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, and other factors used in designing and applying the nonquantitative treatment limitations with respect to medical/surgical benefits in the classifications, as required under paragraph (c)(4)(ii) of this section. The plan collects and evaluates all relevant data in a manner reasonably designed to assess the impact of the nonquantitative treatment limitations related to network composition on access to mental health and substance use disorder benefits as compared with access to medical/surgical benefits and considers the impact as part of the plan's analysis of whether the standards, in operation, comply with paragraphs (c)(4)(i) and (ii) of this section. The plan determined that the data did not reveal any material differences in access. That data included metrics relating to the time and distance from plan participants and beneficiaries to network providers in rural and urban regions; the number of network providers accepting new patients; the proportions of mental health and substance use disorder and medical/surgical providers and facilities that provide services in rural and urban regions who are in the plan's network; provider reimbursement rates; in-network and out-of-network utilization rates (including data related to the dollar value and number of provider claims submissions); and survey data from participants on the extent to which they forgo or pay out-of-pocket for treatment because of challenges finding in-network providers. The efforts the plan made when designing and applying its nonquantitative treatment limitations related to network composition, which ultimately led to its outcomes data not revealing any material differences in access to benefits for mental health or substance use disorders as compared with medical/surgical benefits, included making sure that the plan's service providers are making special efforts to enroll available providers, including by authorizing greater compensation or other inducements to the extent necessary, and expanding telehealth arrangements as appropriate to manage regional shortages. The plan also notifies participants in clear and prominent language on its website, employee brochures, and the summary plan description of a toll-free number available to help participants find in-network providers. In addition, when plan participants submit bills for out-of-network items and services, the plan directs their service providers to reach out to the treating providers and

facilities to see if they will enroll in the network.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(M) (*Example 13*), the plan does not violate this paragraph (c)(4). As stated in the Facts section, the plan's nonquantitative treatment limitations related to network composition comply with the rules of paragraphs (c)(4)(i) and (ii) of this section. The plan collects and evaluates relevant data, as required under paragraph (c)(4)(iv)(A) of this section, and the data does not reveal any material differences in access to mental health and substance use disorder benefits as compared to medical/surgical benefits, as a result of the actions the plan took (as set forth in the facts) when initially designing its nonquantitative treatment limitations related to network composition. Because the plan takes comparable actions to ensure that their mental health and substance use disorder provider network is as accessible as their medical/surgical provider network and exercises careful oversight over both their service providers and the comparative robustness of the networks with an eye to ensuring that network composition results in access to in-network benefits for mental health and substance use disorder services that is as generous as for medical/surgical services, plan participants and beneficiaries can access covered mental health and substance use disorder services and benefits as readily as medical/surgical benefits. This is reflected in the plan's carefully designed metrics and assessment of network composition.

* * * * *

(d) * * *

(3) *Provisions of other law.* Compliance with the disclosure requirements in paragraphs (d)(1) and (2) of this section is not determinative of compliance with any other provision of applicable Federal or State law. In particular, in addition to those disclosure requirements, provisions of other applicable law require disclosure of information relevant to medical/surgical, mental health, and substance use disorder benefits. For example, ERISA section 104 and 29 CFR 2520.104b–1 provide that, for plans subject to ERISA, instruments under which the plan is established or operated must generally be furnished to plan participants within 30 days of request. Instruments under which the plan is established or operated include documents with information on medical necessity criteria for both medical/surgical benefits and mental health and substance use disorder benefits; the processes, strategies, evidentiary standards, and other factors used to apply a nonquantitative treatment limitation with respect to medical/surgical benefits and mental health or substance use disorder benefits under the plan; and the comparative analyses and other applicable information required by § 54.9812–2. In addition, 29 CFR 2560.503–1 and § 54.9815–2719T set forth rules regarding claims and appeals, including the right of claimants (or their authorized representative) upon appeal of an adverse benefit determination (or a final internal adverse benefit determination) to be provided upon request and free of charge, reasonable access to and copies of all documents, records, and other information relevant to the claimant's claim for benefits. This includes documents with information on medical necessity criteria for both medical/surgical benefits and mental health and substance use disorder benefits, as well as the processes, strategies, evidentiary standards, and other factors used to apply a nonquantitative treatment limitation with respect to medical/surgical benefits and mental health or substance use disorder benefits under the plan and the comparative analyses and other applicable information required by § 54.9812–2.

(e) * * *

(4) *Coordination with EHB requirements.* Nothing in paragraph (f) or (g) of this section or § 54.9812–2(g) changes the requirements of 45 CFR 147.150 and 156.115, providing that a health insurance issuer offering non-grandfathered health insurance coverage in the individual or small group market providing mental health and substance use disorder services, including behavioral health treatment services, as part of essential health benefits required under 45 CFR 156.110(a)(5) and 156.115(a), must comply with the requirements under section 2726 of the Public Health Service Act and its implementing regulations to satisfy the requirement to provide coverage for mental health and substance use disorder services, including behavioral health treatment, as part of essential health benefits.

* * * * *

(i) * * *

(1) *In general.* Except as provided in paragraph (i)(2) of this section, this section applies to group health plans on the first day of the first plan year beginning on or after January 1, 2025. Until the applicability date in the preceding sentence, plans are required to continue to comply with 26 CFR 54.9812–1, revised as of April 1, 2023.

* * * * *

(j) *Severability.* If any provision of this section is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of invalidity or unenforceability, in which event the provision shall be severable from this section and shall not affect the remainder thereof or the application of the provision to persons not similarly situated or to dissimilar circumstances.

■ 3. Add § 54.9812–2 to read as follows:

§ 54.9812–2 Nonquantitative treatment limitation comparative analysis requirements.

(a) *Meaning of terms.* Unless otherwise stated in this section, the terms of this section have the meanings indicated in § 54.9812–1(a)(2).

(b) *In general.* In the case of a group health plan that provides both medical/surgical benefits and mental health or substance use disorder benefits and that imposes any nonquantitative treatment limitation on mental health or substance use disorder benefits, the plan must perform and document a comparative analysis of the design and application of each nonquantitative treatment limitation applicable to mental health or substance use disorder benefits. Each comparative analysis must comply with the content requirements of paragraph (c) of this section and be made available to the Secretary, upon request, in the manner required by paragraphs (d) and (e) of this section.

(c) *Comparative analysis content requirements.* With respect to each nonquantitative treatment limitation applicable to mental health or substance use disorder benefits under a group health plan, the comparative analysis performed by the plan must include, at minimum, the elements specified in this paragraph (c). In addition to the comparative analysis for each nonquantitative treatment limitation, each plan must prepare and make available to the Secretary, upon request, a written list of all nonquantitative treatment limitations imposed under the plan and a general description of any information considered or relied upon by the plan in preparing the comparative analysis for each nonquantitative treatment limitation.

(1) *Description of the nonquantitative treatment limitation.* The comparative analysis must include, with respect to the nonquantitative treatment limitation

that is the subject of the comparative analysis:

(i) Identification of the nonquantitative treatment limitation, including the specific terms of the plan or other relevant terms regarding the nonquantitative treatment limitation, the policies or guidelines (internal or external) in which the nonquantitative treatment limitation appears or is described, and the applicable sections of any other relevant documents, such as provider contracts, that describe the nonquantitative treatment limitation;

(ii) Identification of all mental health or substance use disorder benefits and medical/surgical benefits to which the nonquantitative treatment limitation applies, including a list of which benefits are considered mental health or substance use disorder benefits and which benefits are considered medical/surgical benefits;

(iii) A description of which benefits are included in each classification set forth in § 54.9812–1(c)(2)(ii)(A); and

(iv) Identification of the predominant nonquantitative treatment limitation applicable to substantially all medical/surgical benefits in each classification, including an explanation of how the plan determined which variation is the predominant nonquantitative treatment limitation as compared to other variations, as well as how the plan identified the variations of the nonquantitative treatment limitation.

(2) *Identification and definition of the factors used to design or apply the nonquantitative treatment limitation.* The comparative analysis must include, with respect to every factor considered or relied upon to design the nonquantitative treatment limitation or apply the nonquantitative treatment limitation to mental health or substance use disorder benefits and medical/surgical benefits:

(i) Identification of all of the factors considered, as well as the evidentiary standards considered or relied upon to design or apply each factor and the sources from which each evidentiary standard was derived, in determining which mental health or substance use disorder benefits and which medical/surgical benefits are subject to the nonquantitative treatment limitation; and

(ii) A definition of each factor, including:

(A) A detailed description of the factor; and

(B) A description of each evidentiary standard (and the source of each evidentiary standard) identified under paragraph (c)(2)(i) of this section.

(3) *Description of how factors are used in the design and application of the nonquantitative treatment limitation.* The comparative analysis must include a description of how each factor identified and defined pursuant to paragraph (c)(2) of this section is used in the design or application of the nonquantitative treatment limitation to mental health and substance use disorder benefits and medical/surgical benefits in a classification, including:

(i) A detailed explanation of how each factor identified and defined in paragraph (c)(2) of this section is used to determine which mental health or substance use disorder benefits and which medical/surgical benefits are subject to the nonquantitative treatment limitation;

(ii) An explanation of the evidentiary standards or other information or sources (if any) considered or relied upon in designing or applying the factors or relied upon in designing and applying the nonquantitative treatment limitation, including in the determination of whether and how mental health or substance use disorder benefits or medical/surgical benefits are subject to the nonquantitative treatment limitation;

(iii) If the application of the factor depends on specific decisions made in the administration of benefits, the nature of the decisions, the timing of the decisions, and the professional designation and qualifications of each decision maker;

(iv) If more than one factor is identified and defined in paragraph (c)(2) of this section, an explanation of:

(A) How all of the factors relate to each other;

(B) The order in which all the factors are applied, including when they are applied;

(C) Whether and how any factors are given more weight than others; and

(D) The reasons for the ordering or weighting of the factors; and

(v) Any deviation(s) or variation(s) from a factor, its applicability, or its definition (including the evidentiary standards used to define the factor and the information or sources from which each evidentiary standard was derived), such as how the factor is used differently to apply the nonquantitative treatment limitation to mental health or substance use disorder benefits as compared to medical/surgical benefits, and a description of how the plan establishes such deviation(s) or variation(s).

(4) *Demonstration of comparability and stringency as written.* The comparative analysis must evaluate whether, in any classification, under the terms of the plan as written, any processes, strategies, evidentiary standards, or other factors used in designing and applying the nonquantitative treatment limitation to mental health or substance use disorder benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in designing and applying the nonquantitative treatment limitation with respect to medical/surgical benefits. The comparative analysis must include, with respect to the nonquantitative treatment limitation and the factors used in designing and applying the nonquantitative treatment limitation:

(i) Documentation of each factor identified and defined in paragraph (c)(2) of this section that was applied to determine whether the nonquantitative treatment limitation applies to mental health or substance use disorder benefits and medical/surgical benefits in a classification, including, as relevant:

(A) Quantitative data, calculations, or other analyses showing whether, in each classification in which the nonquantitative treatment limitation applies, mental health or substance use disorder benefits and medical/surgical benefits met or did not meet any applicable threshold identified in the relevant evidentiary standard, and the evaluation of relevant data as required under § 54.9812–1(c)(4)(iv)(A), to determine that the nonquantitative treatment limitation would or would not apply; and

(B) Records maintained by the plan documenting the consideration and application of all factors and evidentiary standards, as well as the results of their application;

(ii) In each classification in which the nonquantitative treatment limitation applies to mental health or substance use disorder benefits, a comparison of how the nonquantitative treatment limitation, as written, is applied to mental health or substance use disorder benefits and to medical/surgical benefits, including the specific provisions of any forms, checklists, procedure manuals, or other documentation used in designing and applying the nonquantitative treatment limitation or that address the application of the nonquantitative treatment limitation;

(iii) Documentation demonstrating how the factors are comparably applied, as written, to mental health or substance use disorder benefits and medical/surgical benefits in each classification, to determine which benefits are subject to the nonquantitative treatment limitation; and

(iv) An explanation of the reason(s) for any deviation(s) or variation(s) in the application of a factor used to apply the nonquantitative treatment limitation, or the application of the nonquantitative treatment limitation, to mental health or substance use disorder benefits as compared to medical/surgical benefits, and how the plan establishes such deviation(s) or variation(s), including:

(A) In the definition of the factors, the evidentiary standards used to define the factors, and the sources from which the evidentiary standards were derived;

(B) In the design of the factors or evidentiary standards; or

(C) In the application or design of the nonquantitative treatment limitation.

(5) *Demonstration of comparability and stringency in operation.* The comparative analysis must evaluate whether, in any classification, under the terms of the plan in operation, the processes, strategies, evidentiary standards, or other factors used in designing and applying the nonquantitative treatment limitation to mental health or substance use disorder benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in designing and applying the limitation with respect to medical/surgical benefits. The comparative analysis must include, with respect to the nonquantitative treatment limitation and the factors used in designing and applying the nonquantitative treatment limitation:

(i) A comprehensive explanation of how the plan ensures that, in operation, the processes, strategies, evidentiary standards, or other factors used in designing and applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in a classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in designing and applying the nonquantitative treatment limitation with respect to medical/surgical benefits, including:

(A) An explanation of any methodology and underlying data used to demonstrate the application of the nonquantitative treatment limitation, in operation; and

(B) The sample period, inputs used in any calculations, definitions of terms used, and any criteria used to select the mental health or substance use disorder benefits and medical/surgical benefits to which the nonquantitative treatment limitation is applicable;

(ii) Identification of the relevant data collected and evaluated as required under § 54.9812–1(c)(4)(iv)(A);

(iii) An evaluation of the outcomes that resulted from the application of the nonquantitative treatment limitation to mental health or substance use disorder benefits and medical/surgical benefits, including the relevant data as required under § 54.9812–1(c)(4)(iv)(A);

(iv) A detailed explanation of material differences in outcomes evaluated pursuant to paragraph (c)(5)(iii) of this section that are not attributable to differences in the comparability or relative stringency of the nonquantitative treatment limitation as applied to mental health or substance use disorder benefits and medical/surgical benefits and the bases for concluding that material differences in outcomes are not attributable to differences in the comparability or relative stringency of the nonquantitative treatment limitation; and

(v) A discussion of any measures that have been or are being implemented by the plan to mitigate any material differences in access to mental health or substance use disorder benefits as compared to medical/surgical benefits, including the actions the plan is taking under § 54.9812–1(c)(4)(iv)(B)(*1*) to address material differences to ensure compliance with § 54.9812–1(c)(4)(i) and (ii).

(6) *Findings and conclusions.* The comparative analysis must address the findings and conclusions as to the comparability of the processes, strategies, evidentiary standards, and other factors used in designing and applying the nonquantitative treatment limitation to mental health or substance use disorder benefits and medical/surgical benefits within each classification, and the relative stringency of their application, both as written and in operation, and include:

(i) Any findings or conclusions indicating that the plan is not (or might not be) in compliance with the requirements of § 54.9812–1(c)(4), including any actions the plan has taken or intends to take to address any potential areas of concern or noncompliance;

(ii) A reasoned and detailed discussion of the findings and conclusions described in paragraph (c)(6)(i) of this section;

(iii) Citations to any additional specific information not otherwise included in the comparative analysis that supports the findings and conclusions described in paragraph (c)(6)(i) of this section;

(iv) The date of the analysis and the title and credentials of all relevant persons who participated in the performance and documentation of the comparative analysis; and

(v) If the comparative analysis relies upon an evaluation by a reviewer or consultant considered by the plan to be an expert, an assessment of each expert's qualifications and the extent to which the plan ultimately relied upon each expert's evaluation in performing and documenting the comparative analysis of the design and application of each nonquantitative treatment limitation applicable to both mental health or substance use disorder benefits and medical/surgical benefits.

(d) *Requirements related to submission of comparative analyses to the Secretary upon request*—(1) *Initial request by the Secretary for comparative analysis.* A group health plan must make the comparative analysis required by paragraph (b) of this section available and submit it to the Secretary within 10 business days of receipt of a request from the Secretary (or an additional period of time specified by the Secretary).

(2) *Additional information required after a comparative analysis is deemed to be insufficient.* In instances in which the Secretary determines that the plan has not submitted sufficient information under paragraph (d)(1) of this section for the Secretary to review the comparative analysis required in paragraph (b) of this section, the Secretary will specify to the plan the additional information the plan must submit to the Secretary to be responsive to the request under paragraph (d)(1) of this section. Any such information must be provided to the Secretary by the plan within 10 business days after the Secretary specifies the additional information to be submitted (or an additional period of time specified by the Secretary).

(3) *Initial determination of noncompliance, required action, and corrective action plan.* In instances in which the Secretary reviewed the comparative analysis submitted under paragraph (d)(1) of this section and any additional information submitted under paragraph (d)(2) of this section, and made an initial determination that the plan is not in compliance with the requirements of § 54.9812–1(c)(4) or this section, the plan must respond to the Secretary and specify the actions the plan will take to bring the plan into compliance, and provide to the Secretary additional comparative analyses meeting the requirements of paragraph (b) of this section that demonstrate compliance with § 54.9812–1(c)(4) and this section, not

later than 45 calendar days after the Secretary's initial determination that the plan is not in compliance.

(4) *Requirement to notify participants and beneficiaries of final determination of noncompliance*—(i) *In general.* If the Secretary makes a final determination of noncompliance, the plan must notify all participants and beneficiaries enrolled in the plan that the plan has been determined to not be in compliance with the requirements of § 54.9812–1(c)(4) or this section with respect to such plan. Such notice must be provided within 7 calendar days of receipt of the final determination of noncompliance, and the plan must provide a copy of the notice to the Secretary, and any service provider involved in the claims process.

(ii) *Content of notice.* The notice to participants and beneficiaries required in paragraph (d)(4)(i) of this section shall be written in a manner calculated to be understood by the average plan participant and must include, in plain language, the following information in a standalone notice:

(A) The following statement prominently displayed on the first page, in no less than 14-point font: ''Attention! Department of the Treasury has determined that [insert the name of group health plan] is not in compliance with the Mental Health Parity and Addiction Equity Act.'';

(B) A summary of changes the plan has made as part of its corrective action plan specified to the Secretary following the initial determination of noncompliance, including an explanation of any opportunity for a participant or beneficiary to have a claim for benefits reprocessed;

(C) A summary of the Secretary's final determination that the plan is not in compliance with § 54.9812–1(c)(4) or this section, including any provisions or practices identified as being in violation of MHPAEA, additional corrective actions identified by the Secretary in the final determination notice, and information on how participants and beneficiaries can obtain from the plan a copy of the final determination of noncompliance;

(D) Any additional actions the plan is taking to come into compliance with § 54.9812–1(c)(4) or this section, when the plan will take such actions, and a clear and accurate statement explaining whether the Secretary has indicated that those actions, if completed, will result in compliance; and

(E) Contact information for questions and complaints, and a statement explaining how participants and beneficiaries can obtain more information about the notice, including:

(*1*) The plan's phone number and an email or web portal address; and

(*2*) The Employee Benefits Security Administration's phone number and email or web portal address.

(iii) *Manner of notice.* The plan must make the notice required under paragraph (d)(4)(i) of this section available in paper form, or electronically (such as by email or an internet posting) if:

(A) The format is readily accessible;

(B) The notice is provided in paper form free of charge upon request; and

(C) In a case in which the electronic form is an internet posting, the plan timely notifies the participant or beneficiary in paper form (such as a postcard) or email, that the documents are available on the internet, provides the internet address, includes the statement required in paragraph (d)(4)(ii)(A) of this section, and notifies the participant or beneficiary that the documents are available in paper form upon request.

(e) *Requests for a copy of a comparative analysis.* In addition to making a comparative analysis available upon request to the Secretary, a plan must make available a copy of the comparative analysis required by paragraph (b) of this section when requested by:

(1) Any applicable State authority; and

(2) A participant or beneficiary (or a provider or other person acting as a participant's or beneficiary's authorized representative) who has received an adverse benefit determination related to mental health or substance use disorder benefits.

(f) *Rule of construction.* Nothing in this section or § 54.9812–1 shall be construed to prevent the Secretary from acting within the scope of existing authorities to address violations of § 54.9812–1 or this section.

(g) *Applicability.* The provisions of this section apply to group health plans described in § 54.9812–1(e), to the extent the plan is not exempt under § 54.9812–1(f) or (g), for plan years beginning on or after January 1, 2025.

(h) *Severability.* If any provision of this section is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of invalidity or unenforceability, in which event the provision shall be severable from this section and shall not affect the remainder thereof or the application of the provision to persons not similarly situated or to dissimilar circumstances.

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Chapter XXV

For the reasons set forth in the preamble, the Department of Labor proposes to amend 29 CFR part 2590 as set forth below:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 4. The authority citation for part 2590 continues to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a-n, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L.104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029; Division M, Pub. L. 113–235, 128 Stat. 2130; Pub. L. 116–260 134 Stat. 1182; Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012).

■ 5. Amend § 2590.712 by:
■ a. Redesignating paragraph (a) as paragraph (a)(2) and adding paragraphs (a) heading and (a)(1);
■ b. In newly redesignated paragraph (a)(2):
■ i. Revising the introductory text;
■ ii. Adding the definitions of ''DSM,'' ''Evidentiary standards,'' ''Factors,'' and ''ICD'' in alphabetical order;
■ iii. Revising the definitions of ''Medical/surgical benefits'' and ''Mental health benefits'';
■ iv. Adding the definitions of ''Processes'' and ''Strategies'' in alphabetical order; and
■ v. Revising the definitions of ''Substance use disorder benefits'' and ''Treatment limitations'';
■ c. Revising paragraphs (c)(1)(ii), (c)(2)(i), and (c)(2)(ii)(A) introductory text;
■ d. In paragraph (c)(2)(ii)(C), designating *Examples 1* through *4* as paragraphs (c)(2)(ii)(C)(*1*) through (*4*) and revising newly designated paragraphs (c)(2)(ii)(C)(*1*) through (*4*);
■ e. Adding paragraphs (c)(2)(ii)(C)(*5*) and (*6*);
■ f. Revising paragraphs (c)(3)(i)(A), (C), and (D);
■ g. In paragraph (c)(3)(iii), adding introductory text;
■ h. Revising paragraphs (c)(3)(iii)(A) and (B), (c)(3)(iv), (c)(4), (d)(3), (e)(4), and (i)(1); and
■ i. Adding paragraph (j).

The revisions and additions read as follows:

§ 2590.712 Parity in mental health and substance use disorder benefits

(a) *Purpose and meaning of terms*—(1) *Purpose.* This section and § 2590.712–1 set forth rules to ensure parity in aggregate lifetime and annual dollar limits, financial requirements, and quantitative and nonquantitative treatment limitations between mental health and substance use disorder benefits and medical/surgical benefits, as required under ERISA section 712. A fundamental purpose of ERISA section 712, this section, and § 2590.712–1 is to ensure that participants and beneficiaries in a group health plan (or health insurance coverage offered by an issuer in connection with a group health plan) that offers mental health or substance use disorder benefits are not subject to more restrictive lifetime or annual dollar limits, financial requirements, or treatment limitations with respect to those benefits than the predominant dollar limits, financial requirements, or treatment limitations that are applied to substantially all medical/surgical benefits covered by the plan or coverage, as further provided in this section and § 2590.712–1. Accordingly, in complying with the provisions of ERISA section 712, this section, and § 2590.712–1, plans and issuers must not design or apply financial requirements and treatment limitations that impose a greater burden on access (that is, are more restrictive) to mental health and substance use disorder benefits under the plan or coverage than they impose on access to generally comparable medical/surgical benefits. The provisions of ERISA section 712, this section, and § 2590.712–1 should be interpreted in a manner that is consistent with the purpose described in this paragraph (a)(1).

(2) *Meaning of terms.* For purposes of this section and § 2590.712–1, except where the context clearly indicates otherwise, the following terms have the meanings indicated:

* * * * *

DSM means the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. For the purpose of this definition, the most current version of the DSM is the version that is applicable no earlier than on the date that is 1 year before the first day of the applicable plan year.

Evidentiary standards are any evidence, sources, or standards that a group health plan (or health insurance issuer offering coverage in connection with such a plan) considered or relied upon in designing or applying a factor with respect to a nonquantitative treatment limitation, including specific benchmarks or thresholds. Evidentiary standards may be empirical, statistical, or clinical in nature, and include: sources acquired or originating from an objective third party, such as recognized medical literature, professional standards and protocols (which may include comparative effectiveness studies and clinical trials), published research studies, payment rates for items and services (such as publicly available databases of the ''usual, customary and reasonable'' rates paid for items and services), and clinical treatment guidelines; internal plan or issuer data, such as claims or utilization data or criteria for assuring a sufficient mix and number of network providers; and benchmarks or thresholds, such as measures of excessive utilization, cost levels, time or distance standards, or network participation percentage thresholds.

Factors are all information, including processes and strategies (but not evidentiary standards), that a group health plan (or health insurance issuer offering coverage in connection with such a plan) considered or relied upon to design a nonquantitative treatment limitation, or to determine whether or how the nonquantitative treatment limitation applies to benefits under the plan or coverage. Examples of factors include, but are not limited to: provider discretion in determining a diagnosis or type or length of treatment; clinical efficacy of any proposed treatment or service; licensing and accreditation of providers; claim types with a high percentage of fraud; quality measures; treatment outcomes; severity or chronicity of condition; variability in the cost of an episode of treatment; high cost growth; variability in cost and quality; elasticity of demand; and geographic location.

* * * * *

ICD means the World Health Organization's International Classification of Diseases adopted by the Department of Health and Human Services through 45 CFR 162.1002. For the purpose of this definition, the most current version of the ICD is the version that is applicable no earlier than on the date that is 1 year before the first day of the applicable plan year.

Medical/surgical benefits means benefits with respect to items or services for medical conditions or surgical procedures, as defined under the terms of the group health plan (or health insurance coverage offered by an issuer in connection with such a plan) and in accordance with applicable Federal and State law, but does not include mental health benefits or substance use disorder benefits. Notwithstanding the preceding sentence, any condition or procedure defined by the plan or coverage as being or as not being a medical condition or surgical procedure must be defined consistent with generally recognized independent standards of current medical practice (for example, the most current version of the ICD). To the extent generally recognized independent standards of current medical practice do not address whether a condition or procedure is a medical condition or surgical procedure, plans and issuers may define the condition or procedure in accordance with applicable Federal and State law.

Mental health benefits means benefits with respect to items or services for mental health conditions, as defined under the terms of the group health plan (or health insurance coverage offered by an issuer in connection with such a plan) and in accordance with applicable Federal and State law, but does not include medical/surgical benefits or substance use disorder benefits. Notwithstanding the preceding sentence, any condition defined by the plan or coverage as being or as not being a mental health condition must be defined consistent with generally recognized independent standards of current medical practice. For the purpose of this definition, to be consistent with generally recognized independent standards of current medical practice, the definition must include all conditions covered under the plan or coverage, except for substance use disorders, that fall under any of the diagnostic categories listed in the mental, behavioral, and neurodevelopmental disorders chapter (or equivalent chapter) of the most current version of the ICD or that are listed in the most current version of the DSM. To the extent generally recognized independent standards of current medical practice do not address whether a condition is a mental health condition, plans and issuers may define the condition in accordance with applicable Federal and State law.

Processes are actions, steps, or procedures that a group health plan (or health insurance issuer offering coverage in connection with such a plan) uses to apply a nonquantitative treatment limitation, including actions, steps, or procedures established by the plan or issuer as requirements in order for a participant or beneficiary to access benefits, including through actions by a participant's or beneficiary's authorized representative or a provider or facility. Processes include but are not limited to:

procedures to submit information to authorize coverage for an item or service prior to receiving the benefit or while treatment is ongoing (including requirements for peer or expert clinical review of that information); provider referral requirements; and the development and approval of a treatment plan. Processes also include the specific procedures used by staff or other representatives of a plan or issuer (or the service provider of a plan or issuer) to administer the application of nonquantitative treatment limitations, such as how a panel of staff members applies the nonquantitative treatment limitation (including the qualifications of staff involved, number of staff members allocated, and time allocated), consultations with panels of experts in applying the nonquantitative treatment limitation, and reviewer discretion in adhering to criteria hierarchy when applying a nonquantitative treatment limitation.

Strategies are practices, methods, or internal metrics that a plan (or health insurance issuer offering coverage in connection with such a plan) considers, reviews, or uses to design a nonquantitative treatment limitation. Examples of strategies include but are not limited to: the development of the clinical rationale used in approving or denying benefits; deviation from generally accepted standards of care; the selection of information deemed reasonably necessary to make a medical necessity determination; reliance on treatment guidelines or guidelines provided by third-party organizations; and rationales used in selecting and adopting certain threshold amounts, professional protocols, and fee schedules. Strategies also include the creation and composition of the staff or other representatives of a plan or issuer (or the service provider of a plan or issuer) that deliberates, or otherwise makes decisions, on the design of nonquantitative treatment limitations, including the plan's decisions related to the qualifications of staff involved, number of staff members allocated, and time allocated; breadth of sources and evidence considered; consultations with panels of experts in designing the nonquantitative treatment limitation; and the composition of the panels used to design a nonquantitative treatment limitation.

Substance use disorder benefits means benefits with respect to items or services for substance use disorders, as defined under the terms of the group health plan (or health insurance coverage offered by an issuer in connection with such a plan) and in accordance with applicable Federal and State law, but does not include medical/surgical benefits or mental health benefits. Notwithstanding the preceding sentence, any disorder defined by the plan or coverage as being or as not being a substance use disorder must be defined consistent with generally recognized independent standards of current medical practice. For the purpose of this definition, to be consistent with generally recognized independent standards of current medical practice, the definition must include all disorders covered under the plan or coverage that fall under any of the diagnostic categories listed as a mental or behavioral disorder due to psychoactive substance use (or equivalent category) in the mental, behavioral and neurodevelopmental disorders chapter (or equivalent chapter) of the most current version of the ICD or that are listed as a Substance-Related and Addictive Disorder (or equivalent category) in the most current version of the DSM. To the extent generally recognized independent standards of current medical practice do not address whether a disorder is a substance use disorder, plans and issuers may define the disorder in accordance with applicable Federal and State law.

Treatment limitations include limits on benefits based on the frequency of treatment, number of visits, days of coverage, days in a waiting period, or other similar limits on the scope or duration of treatment. Treatment limitations include both quantitative treatment limitations, which are expressed numerically (such as 50 outpatient visits per year), and nonquantitative treatment limitations, which otherwise limit the scope or duration of benefits for treatment under a plan or coverage. (See paragraph (c)(4)(iii) of this section for an illustrative, non-exhaustive list of nonquantitative treatment limitations.) A complete exclusion of all benefits for a particular condition or disorder, however, is not a treatment limitation for purposes of this definition.

* * * * *

(c) * * *

(1) * * *

(ii) *Type of financial requirement or treatment limitation.* When reference is made in this paragraph (c) to a type of financial requirement or treatment limitation, the reference to type means its nature. Different types of financial requirements include deductibles, copayments, coinsurance, and out-of-pocket maximums. Different types of quantitative treatment limitations include annual, episode, and lifetime day and visit limits. See paragraph (c)(4)(iii) of this section for an illustrative, non-exhaustive list of nonquantitative treatment limitations.

* * * * *

(2) * * *

(i) *General rule.* A group health plan (or health insurance coverage offered by an issuer in connection with a group health plan) that provides both medical/surgical benefits and mental health or substance use disorder benefits may not apply any financial requirement or treatment limitation to mental health or substance use disorder benefits in any classification that is more restrictive than the predominant financial requirement or treatment limitation of that type applied to substantially all medical/surgical benefits in the same classification. Whether a financial requirement or treatment limitation is a predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in a classification is determined separately for each type of financial requirement or treatment limitation. A plan or issuer may not impose any financial requirement or treatment limitation that is applicable only with respect to mental health or substance use disorder benefits and not to any medical/surgical benefits in the same benefit classification. The application of the rules of this paragraph (c)(2) to financial requirements and quantitative treatment limitations is addressed in paragraph (c)(3) of this section; the application of the rules of this paragraph (c)(2) to nonquantitative treatment limitations is addressed in paragraph (c)(4) of this section.

(ii) * * *

(A) *In general.* If a plan (or health insurance coverage) provides any benefits for a mental health condition or substance use disorder in any classification of benefits described in this paragraph (c)(2)(ii), benefits for that mental health condition or substance use disorder must be provided in every classification in which medical/surgical benefits are provided. For purposes of this paragraph (c)(2)(ii), a plan (or health insurance coverage) providing any benefits for a mental health condition or substance use disorder in any classification of benefits does not provide benefits for the mental health condition or substance use disorder in every classification in which medical/surgical benefits are provided unless the plan (or health insurance coverage) provides meaningful benefits for treatment for that condition or disorder in each such classification, as determined in comparison to the

benefits provided for medical/surgical conditions in the classification. In determining the classification in which a particular benefit belongs, a plan (or health insurance issuer) must apply the same standards to medical/surgical benefits and to mental health or substance use disorder benefits. To the extent that a plan (or health insurance coverage) provides benefits in a classification and imposes any separate financial requirement or treatment limitation (or separate level of a financial requirement or treatment limitation) for benefits in the classification, the rules of this paragraph (c) apply separately with respect to that classification for all financial requirements or treatment limitations (illustrated in examples in paragraph (c)(2)(ii)(C) of this section). The following classifications of benefits are the only classifications used in applying the rules of this paragraph (c), in addition to the permissible sub-classifications described in paragraph (c)(3)(iii) of this section:

* * * * *

(C) * * *

(*1*) *Example 1*—(*i*) *Facts.* A group health plan offers inpatient and outpatient benefits and does not contract with a network of providers. The plan imposes a $500 deductible on all benefits. For inpatient medical/surgical benefits, the plan imposes a coinsurance requirement. For outpatient medical/surgical benefits, the plan imposes copayments. The plan imposes no other financial requirements or treatment limitations.

(*ii*) *Conclusion.* In this paragraph (c)(2)(ii)(C)(*1*) (*Example 1*), because the plan has no network of providers, all benefits provided are out-of-network. Because inpatient, out-of-network medical/surgical benefits are subject to separate financial requirements from outpatient, out-of-network medical/surgical benefits, the rules of this paragraph (c) apply separately with respect to any financial requirements and treatment limitations, including the deductible, in each classification.

(*2*) *Example 2*—(*i*) *Facts.* A plan imposes a $500 deductible on all benefits. The plan has no network of providers. The plan generally imposes a 20 percent coinsurance requirement with respect to all benefits, without distinguishing among inpatient, outpatient, emergency care, or prescription drug benefits. The plan imposes no other financial requirements or treatment limitations.

(*ii*) *Conclusion.* In this paragraph (c)(2)(ii)(C)(*2*) (*Example 2*), because the plan does not impose separate financial requirements (or treatment limitations) based on classification, the rules of this paragraph (c) apply with respect to the deductible and the coinsurance across all benefits.

(*3*) *Example 3*—(*i*) *Facts.* Same facts as in paragraph (c)(2)(ii)(C)(*2*)(*i*) of this section (*Example 2*), except the plan exempts emergency care benefits from the 20 percent coinsurance requirement. The plan imposes no other financial requirements or treatment limitations.

(*ii*) *Conclusion.* In this paragraph (c)(2)(ii)(C)(*3*) (*Example 3*), because the plan imposes separate financial requirements based on classifications, the rules of this paragraph (c) apply with respect to the deductible and the coinsurance separately for benefits in the emergency care classification and all other benefits.

(*4*) *Example 4*—(*i*) *Facts.* Same facts as in paragraph (c)(2)(ii)(C)(*2*)(*i*) of this section (*Example 2*), except the plan also imposes a preauthorization requirement for all inpatient treatment in order for benefits to be paid. No such requirement applies to outpatient treatment.

(*ii*) *Conclusion.* In this paragraph (c)(2)(ii)(C)(*4*) (*Example 4*), because the plan has no network of providers, all benefits provided are out-of-network. Because the plan imposes a separate treatment limitation based on classifications, the rules of this paragraph (c) apply with respect to the deductible and coinsurance separately for inpatient, out-of-network benefits and all other benefits.

(*5*) *Example 5*—(*i*) *Facts.* A plan generally covers treatment for autism spectrum disorder (ASD), a mental health condition, and covers outpatient, out-of-network developmental evaluations for ASD but excludes all other benefits for outpatient treatment for ASD, including applied behavioral analysis (ABA) therapy, when provided on an out-of-network basis. The plan generally covers the full range of outpatient treatments and treatment settings for medical conditions and surgical procedures when provided on an out-of-network basis.

(*ii*) *Conclusion.* In this paragraph (c)(2)(ii)(C)(*5*) (*Example 5*), the plan violates the rules of this paragraph (c)(2)(ii). Because the plan only covers one type of benefit for ASD in the outpatient, out-of-network classification and excludes all other benefits for ASD in the classification, but generally covers the full range of medical/surgical benefits in the classification, it fails to provide meaningful benefits for treatment of ASD in the classification.

(*6*) *Example 6*—(*i*) *Facts.* A plan generally covers diagnosis and treatment for eating disorders, a mental health condition, but specifically excludes coverage for nutrition counseling to treat eating disorders, including in the outpatient, in-network classification. Nutrition counseling is one of the primary treatments for eating disorders. The plan generally provides benefits for the primary treatments for medical/surgical conditions in the outpatient, in-network classification.

(*ii*) *Conclusion.* In this paragraph (c)(2)(ii)(C)(*6*) (*Example 6*), the plan violates the rules of this paragraph (c)(2)(ii). The exclusion of coverage for nutrition counseling for eating disorders results in the plan failing to provide meaningful benefits for the treatment of eating disorders in the outpatient, in-network classification, as determined in comparison to the benefits provided for medical/surgical conditions in the classification.

(3) * * *

(i) * * *

(A) *Substantially all.* For purposes of this paragraph (c)(3), a type of financial requirement or quantitative treatment limitation is considered to apply to substantially all medical/surgical benefits in a classification of benefits if it applies to at least two-thirds of all medical/surgical benefits in that classification. (For purposes of this paragraph (c)(3)(i)(A), benefits expressed as subject to a zero level of a type of financial requirement are treated as benefits not subject to that type of financial requirement, and benefits expressed as subject to a quantitative treatment limitation that is unlimited are treated as benefits not subject to that type of quantitative treatment limitation.) If a type of financial requirement or quantitative treatment limitation does not apply to at least two-thirds of all medical/surgical benefits in a classification, then that type cannot be applied to mental health or substance use disorder benefits in that classification.

* * * * *

(C) *Portion based on plan payments.* For purposes of this paragraph (c)(3), the determination of the portion of medical/surgical benefits in a classification of benefits subject to a financial requirement or quantitative treatment limitation (or subject to any level of a financial requirement or quantitative treatment limitation) is based on the dollar amount of all plan payments for medical/surgical benefits in the classification expected to be paid under the plan for the plan year (or for the portion of the plan year after a change in plan benefits that affects the applicability of the financial

requirement or quantitative treatment limitation).

(D) *Clarifications for certain threshold requirements.* For any deductible, the dollar amount of plan payments includes all plan payments with respect to claims that would be subject to the deductible if it had not been satisfied. For any out-of-pocket maximum, the dollar amount of plan payments includes all plan payments associated with out-of-pocket payments that are taken into account towards the out-of-pocket maximum as well as all plan payments associated with out-of-pocket payments that would have been made towards the out-of-pocket maximum if it had not been satisfied. Similar rules apply for any other thresholds at which the rate of plan payment changes. (See also PHS Act section 2707 and Affordable Care Act section 1302(c), which establish annual limitations on out-of-pocket maximums for all non-grandfathered health plans.)

* * * * *

(iii) *Special rules.* Unless specifically permitted under this paragraph (c)(3)(iii), sub-classifications are not permitted when applying the rules of paragraph (c)(3) of this section.

(A) *Multi-tiered prescription drug benefits.* If a plan (or health insurance coverage) applies different levels of financial requirements to different tiers of prescription drug benefits based on reasonable factors determined in accordance with the rules in paragraph (c)(4) of this section (relating to requirements for nonquantitative treatment limitations) and without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits, the plan (or health insurance coverage) satisfies the parity requirements of this paragraph (c) with respect to prescription drug benefits. Reasonable factors include cost, efficacy, generic versus brand name, and mail order versus pharmacy pick-up.

(B) *Multiple network tiers.* If a plan (or health insurance coverage) provides benefits through multiple tiers of in-network providers (such as an in-network tier of preferred providers with more generous cost-sharing to participants than a separate in-network tier of participating providers), the plan may divide its benefits furnished on an in-network basis into sub-classifications that reflect network tiers, if the tiering is based on reasonable factors determined in accordance with the rules in paragraph (c)(4) of this section (such as quality, performance, and market standards) and without regard to whether a provider provides services with respect to medical/surgical benefits or mental health or substance use disorder benefits. After the sub-classifications are established, the plan or issuer may not impose any financial requirement or treatment limitation on mental health or substance use disorder benefits in any sub-classification that is more restrictive than the predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in the sub-classification using the methodology set forth in paragraph (c)(3)(i) of this section.

* * * * *

(iv) *Examples.* The rules of paragraphs (c)(3)(i) through (iii) of this section are illustrated by the following examples. In each example, the group health plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits.

(A) *Example 1*—(*1*) *Facts.* (*i*) For inpatient, out-of-network medical/surgical benefits, a group health plan imposes five levels of coinsurance. Using a reasonable method, the plan projects its payments for the upcoming year as follows:

TABLE 1 TO PARAGRAPH (C)(3)(IV)(A)(*1*)(*i*)

Coinsurance rate	0%	10%	15%	20%	30%	Total
Projected payments	$200x	$100x	$450x	$100x	$150x	$1,000x
Percent of total plan costs	20	10	45	10	15	
Percent subject to coinsurance level	N/A	12.5 (100x/800x)	56.25 (450x/800x)	12.5 (100x/800x)	18.75 (150x/800x)	

(*ii*) The plan projects plan costs of $800x to be subject to coinsurance ($100x + $450x + $100x + $150x = $800x). Thus, 80 percent ($800x/$1,000x) of the benefits are projected to be subject to coinsurance, and 56.25 percent of the benefits subject to coinsurance are projected to be subject to the 15 percent coinsurance level.

(*2*) *Conclusion.* In this paragraph (c)(3)(iv)(A) (*Example 1*), the two-thirds threshold of the substantially all standard is met for coinsurance because 80 percent of all inpatient, out-of-network medical/surgical benefits are subject to coinsurance. Moreover, the 15 percent coinsurance is the predominant level because it is applicable to more than one-half of inpatient, out-of-network medical/surgical benefits subject to the coinsurance requirement. The plan may not impose any level of coinsurance with respect to inpatient, out-of-network mental health or substance use disorder benefits that is more restrictive than the 15 percent level of coinsurance.

(B) *Example 2*—(*1*) *Facts.* (*i*) For outpatient, in-network medical/surgical benefits, a plan imposes five different copayment levels. Using a reasonable method, the plan projects payments for the upcoming year as follows:

TABLE 2 TO PARAGRAPH (C)(3)(IV)(B)(*1*)(*i*)

Copayment amount	$0	$10	$15	$20	$50	Total
Projected payments	$200x	$200x	$200x	$300x	$100x	$1,000x
Percent of total plan costs	20	20	20	30	10	
Percent subject to copayments	N/A	25 (200x/800x)	25 (200x/800x)	37.5 (300x/800x)	12.5 (100x/800x)	

(*ii*) The plan projects plan costs of $800x to be subject to copayments ($200x + $200x +$300x + $100x = $800x). Thus, 80 percent ($800x/$1,000x) of the benefits are projected to be subject to a copayment.

(*2*) *Conclusion.* In this paragraph (c)(3)(iv)(B) (*Example 2*), the two-thirds threshold of the substantially all standard is met for copayments because 80 percent of all outpatient, in-network medical/surgical benefits are subject to

a copayment. Moreover, there is no single level that applies to more than one-half of medical/surgical benefits in the classification subject to a copayment (for the $10 copayment, 25%; for the $15 copayment, 25%; for the $20 copayment, 37.5%; and for the $50 copayment, 12.5%). The plan can combine any levels of copayment, including the highest levels, to determine the predominant level that can be applied to mental health or substance use disorder benefits. If the plan combines the highest levels of copayment, the combined projected payments for the two highest copayment levels, the $50 copayment and the $20 copayment, are not more than one-half of the outpatient, in-network medical/surgical benefits subject to a copayment because they are exactly one-half ($300x + $100x = $400x; $400x/$800x = 50%). The combined projected payments for the three highest copayment levels—the $50 copayment, the $20 copayment, and the $15 copayment—are more than one-half of the outpatient, in-network medical/surgical benefits subject to the copayments ($100x + $300x + $200x = $600x; $600x/$800x = 75%). Thus, the plan may not impose any copayment on outpatient, in-network mental health or substance use disorder benefits that is more restrictive than the least restrictive copayment in the combination, the $15 copayment.

(C) *Example 3*—(*1*) *Facts.* A plan imposes a $250 deductible on all medical/surgical benefits for self-only coverage and a $500 deductible on all medical/surgical benefits for family coverage. The plan has no network of providers. For all medical/surgical benefits, the plan imposes a coinsurance requirement. The plan imposes no other financial requirements or treatment limitations.

(*2*) *Conclusion.* In this paragraph (c)(3)(iv)(C) (*Example 3*), because the plan has no network of providers, all benefits are provided out-of-network. Because self-only and family coverage are subject to different deductibles, whether the deductible applies to substantially all medical/surgical benefits is determined separately for self-only medical/surgical benefits and family medical/surgical benefits. Because the coinsurance is applied without regard to coverage units, the predominant coinsurance that applies to substantially all medical/surgical benefits is determined without regard to coverage units.

(D) *Example 4*—(*1*) *Facts.* A plan applies the following financial requirements for prescription drug benefits. The requirements are applied without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits. Moreover, the process for certifying a particular drug as ''generic'', ''preferred brand name'', ''non-preferred brand name'', or ''specialty'' complies with the rules of paragraph (c)(4) of this section (relating to requirements for nonquantitative treatment limitations).

TABLE 3 TO PARAGRAPH (C)(3)(IV)(D)(*1*)

	Tier 1	Tier 2	Tier 3	Tier 4
Tier description	Generic drugs	Preferred brand name drugs.	Non-preferred brand name drugs (which may have Tier 1 or Tier 2 alternatives).	Specialty drugs.
Percent paid by plan	90	80	60	50.

(*2*) *Conclusion.* In this paragraph (c)(3)(iv)(D) (*Example 4*), the financial requirements that apply to prescription drug benefits are applied without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits; the process for certifying drugs in different tiers complies with paragraph (c)(4) of this section; and the bases for establishing different levels or types of financial requirements are reasonable. The financial requirements applied to prescription drug benefits do not violate the parity requirements of this paragraph (c)(3).

(E) *Example 5*—(*1*) *Facts.* A plan has two-tiers of network of providers: a preferred provider tier and a participating provider tier. Providers are placed in either the preferred tier or participating tier based on reasonable factors determined in accordance with the rules in paragraph (c)(4) of this section, such as accreditation, quality and performance measures (including customer feedback), and relative reimbursement rates. Furthermore, provider tier placement is determined without regard to whether a provider specializes in the treatment of mental health conditions or substance use disorders, or medical/surgical conditions. The plan divides the in-network classifications into two sub-classifications (in-network/preferred and in-network/participating). The plan does not impose any financial requirement or treatment limitation on mental health or substance use disorder benefits in either of these sub-classifications that is more restrictive than the predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in each sub-classification.

(*2*) *Conclusion.* In this paragraph (c)(3)(iv)(E) (*Example 5*), the division of in-network benefits into sub-classifications that reflect the preferred and participating provider tiers does not violate the parity requirements of this paragraph (c)(3).

(F) *Example 6*—(*1*) *Facts.* With respect to outpatient, in-network benefits, a plan imposes a $25 copayment for office visits and a 20 percent coinsurance requirement for outpatient surgery. The plan divides the outpatient, in-network classification into two sub-classifications (in-network office visits and all other outpatient, in-network items and services).The plan or issuer does not impose any financial requirement or quantitative treatment limitation on mental health or substance use disorder benefits in either of these sub-classifications that is more restrictive than the predominant financial requirement or quantitative treatment limitation that applies to substantially all medical/surgical benefits in each sub-classification.

(*2*) *Conclusion.* In this paragraph (c)(3)(iv)(F) (*Example 6*), the division of outpatient, in-network benefits into sub-classifications for office visits and all other outpatient, in-network items and services does not violate the parity requirements of this paragraph (c)(3).

(G) *Example 7*—(*1*) *Facts.* Same facts as in paragraph (c)(3)(iv)(F)(*1*) of this section (*Example 6*), but for purposes of determining parity, the plan divides the outpatient, in-network classification into outpatient, in-network generalists and outpatient, in-network specialists.

(*2*) *Conclusion.* In this paragraph (c)(3)(iv)(G) (*Example 7*), the division of outpatient, in-network benefits into any sub-classifications other than office visits and all other outpatient items and services violates the requirements of paragraph (c)(3)(iii)(C) of this section.

* * * * *

(4) *Nonquantitative treatment limitations.* Subject to paragraph (c)(4)(v) of this section, a group health plan (or health insurance coverage offered by an issuer in connection with a group health plan) may not impose a nonquantitative treatment limitation with respect to mental health or substance use disorder benefits in a classification unless the plan's or coverage's imposition of the limitation meets the requirements of paragraphs (c)(4)(i), (ii), and (iv) of this section. If a group health plan (or health insurance coverage offered by an issuer in connection with a group health plan) fails to meet any of these requirements with respect to a nonquantitative treatment limitation, the limitation violates section 712(a)(3)(A)(ii) of ERISA and may not be imposed by the plan (or health insurance coverage).

(i) *Requirement that nonquantitative treatment limitations be no more restrictive for mental health benefits and substance use disorder benefits.* A group health plan (or health insurance issuer offering coverage in connection with a group health plan) may not apply any nonquantitative treatment limitation with respect to mental health or substance use disorder benefits in any classification that is more restrictive, as written or in operation, than the predominant nonquantitative treatment limitation applied to substantially all medical/surgical benefits in the same classification.

(A) *Restrictive.* For purposes of this paragraph (c)(4)(i), a nonquantitative treatment limitation is restrictive to the extent it imposes conditions, terms, or requirements that limit access to benefits under the terms of the plan or coverage. Conditions, terms, or requirements include, but are not limited to, those that compel an action by or on behalf of a participant or beneficiary to access benefits or limit access to the full range of treatment options available for a condition or disorder under the plan or coverage.

(B) *Substantially all.* For purposes of this paragraph (c)(4)(i), a nonquantitative treatment limitation is considered to apply to substantially all medical/surgical benefits in a classification if it applies to at least two-thirds of all medical/surgical benefits in that classification, consistent with paragraph (c)(4)(i)(D) of this section. Whether the nonquantitative treatment limitation applies to at least two-thirds of all medical/surgical benefits is determined without regard to whether the nonquantitative treatment limitation was triggered based on a particular factor or evidentiary standard. If a nonquantitative treatment limitation does not apply to at least two-thirds of all medical/surgical benefits in a classification, then that limitation cannot be applied to mental health or substance use disorder benefits in that classification.

(C) *Predominant.* For purposes of this paragraph (c)(4)(i), the term predominant means the most common or most frequent variation of the nonquantitative treatment limitation within a classification, determined in accordance with the method outlined in paragraph (c)(4)(i)(D) of this section, to the extent the plan or issuer imposes multiple variations of a nonquantitative treatment limitation within the classification. For example, multiple variations of inpatient concurrent review include review commencing 1 day, 3 days, or 7 days after admission, depending on the reason for the stay.

(D) *Portion based on plan payments.* For purposes of paragraphs (c)(4)(i)(B) and (C) of this section, the determination of the portion of medical/surgical benefits in a classification of benefits subject to a nonquantitative treatment limitation is based on the dollar amount of all plan payments for medical/surgical benefits in the classification expected to be paid under the plan or coverage for the plan year (or the portion of the plan year after a change in benefits that affects the applicability of the nonquantitative treatment limitation). Any reasonable method may be used to determine the dollar amount expected to be paid under a plan or coverage for medical/surgical benefits.

(E) *Exceptions for independent professional medical or clinical standards and standards to detect or prevent and prove fraud, waste, and abuse.* Notwithstanding paragraphs (c)(4)(i)(A) through (D) of this section, a plan or issuer that applies a nonquantitative treatment limitation that impartially applies independent professional medical or clinical standards or applies standards to detect or prevent and prove fraud, waste, and abuse, as described in paragraph (c)(4)(v)(A) or (B) of this section, to mental health or substance use disorder benefits in any classification will not be considered to violate this paragraph (c)(4)(i) with respect to such nonquantitative treatment limitation.

(ii) *Additional requirements related to design and application of the nonquantitative treatment limitation*—(A) *In general.* Consistent with paragraph (a)(1) of this section, a plan or issuer may not impose a nonquantitative treatment limitation with respect to mental health or substance use disorder benefits in any classification unless, under the terms of the plan (or health insurance coverage) as written and in operation, any processes, strategies, evidentiary standards, or other factors used in designing and applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in designing and applying the limitation with respect to medical/surgical benefits in the classification.

(B) *Prohibition on discriminatory factors and evidentiary standards.* For purposes of determining comparability and stringency under paragraph (c)(4)(ii)(A) of this section, a plan or issuer may not rely upon any factor or evidentiary standard if the information, evidence, sources, or standards on which the factor or evidentiary standard is based discriminates against mental health or substance use disorder benefits as compared to medical/surgical benefits. For purposes of this paragraph (c)(4)(ii)(B):

(*1*) Impartially applied generally recognized independent professional medical or clinical standards described in paragraph (c)(4)(v)(A) of this section are not considered to discriminate against mental health or substance use disorder benefits.

(*2*) Standards reasonably designed to detect or prevent and prove fraud, waste, and abuse described in paragraph (c)(4)(v)(B) of this section are not considered to discriminate against mental health or substance use disorder benefits.

(*3*) Information is considered to discriminate against mental health or substance use disorder benefits if it is biased or not objective, in a manner that results in less favorable treatment of mental health or substance use disorder benefits, based on all the relevant facts and circumstances including, but not limited to, the source of the information, the purpose or context of the information, and the content of the information.

(iii) *Illustrative, non-exhaustive list of nonquantitative treatment limitations.* Nonquantitative treatment limitations include—

(A) Medical management standards (such as prior authorization) limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative;

(B) Formulary design for prescription drugs;

(C) For plans with multiple network tiers (such as preferred providers and participating providers), network tier design;

(D) Standards related to network composition, including but not limited to, standards for provider and facility admission to participate in a network or for continued network participation, including methods for determining reimbursement rates, credentialing standards, and procedures for ensuring the network includes an adequate number of each category of provider and facility to provide services under the plan or coverage;

(E) Plan or issuer methods for determining out-of-network rates, such as allowed amounts; usual, customary, and reasonable charges; or application of other external benchmarks for out-of-network rates;

(F) Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols);

(G) Exclusions based on failure to complete a course of treatment; and

(H) Restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the plan or coverage.

(iv) *Required use of outcomes data*—(A) *In general.* When designing and applying a nonquantitative treatment limitation, a plan or issuer must collect and evaluate relevant data in a manner reasonably designed to assess the impact of the nonquantitative treatment limitation on access to mental health and substance use disorder benefits and medical/surgical benefits, and consider the impact as part of the plan's or issuer's analysis of whether the limitation, in operation, complies with paragraphs (c)(4)(i) and (ii) of this section. The Secretary, jointly with the Secretary of the Treasury and the Secretary of Health and Human Services, may specify in guidance the type, form, and manner of collection and evaluation for the data required under this paragraph (c)(4)(iv)(A).

(*1*) For purposes of this paragraph (c)(4)(iv)(A), relevant data includes, but is not limited to, the number and percentage of claims denials and any other data relevant to the nonquantitative treatment limitation required by State law or private accreditation standards.

(*2*) In addition to the relevant data set forth in paragraph (c)(4)(iv)(A)(*1*) of this section, relevant data for nonquantitative treatment limitations related to network composition standards includes, but is not limited to, in-network and out-of-network utilization rates (including data related to provider claim submissions), network adequacy metrics (including time and distance data, and data on providers accepting new patients), and provider reimbursement rates (including as compared to billed charges).

(B) *Material differences.* Subject to paragraph (c)(4)(iv)(C) of this section, to the extent the relevant data evaluated pursuant to paragraph (c)(4)(iv)(A) of this section show material differences in access to mental health and substance use disorder benefits as compared to medical/surgical benefits, the differences will be considered a strong indicator that the plan or issuer violates paragraph (c)(4)(i) or (ii) of this section. In such instances, the plan or issuer:

(*1*) Must take reasonable action to address the material differences in access as necessary to ensure compliance, in operation, with paragraphs (c)(4)(i) and (ii) of this section; and

(*2*) Must document the action that has been or is being taken by the plan or issuer to mitigate any material differences in access to mental health and substance use disorder benefits as compared to medical/surgical benefits, as required by § 2590.712–1(c)(5)(iv).

(C) *Special rule for nonquantitative treatment limitations related to network composition.* Notwithstanding paragraph (c)(4)(iv)(B) of this section, when designing and applying one or more nonquantitative treatment limitation(s) related to network composition standards, a plan or issuer fails to meet the requirements of paragraphs (c)(4)(i) and (ii) of this section, in operation, if the relevant data show material differences in access to in-network mental health and substance use disorder benefits as compared to in-network medical/surgical benefits in a classification.

(D) *Exception for independent professional medical or clinical standards.* A plan or issuer designing and applying a nonquantitative treatment limitation with respect to mental health or substance use disorder benefits in any classification that impartially applies independent professional medical or clinical standards, as described in paragraph (c)(4)(v)(A) of this section, is not required to comply with the requirements of this paragraph (c)(4)(iv) with respect to that classification.

(v) *Independent professional medical or clinical standards and standards to detect or prevent and prove fraud, waste, and abuse.* (A) To qualify for the exceptions in paragraphs (c)(4)(i)(E), (c)(4)(ii)(B), and (c)(4)(iv)(D) of this section for independent professional medical or clinical standards, a nonquantitative treatment limitation must impartially apply generally recognized independent professional medical or clinical standards (consistent with generally accepted standards of care) to medical/surgical benefits and mental health or substance use disorder benefits, and may not deviate from those standards in any way, such as by imposing additional or different requirements.

(B) To qualify for the exceptions in paragraphs (c)(4)(i)(E) and (c)(4)(ii)(B) of this section to detect or prevent and prove fraud, waste, and abuse, a nonquantitative treatment limitation must be reasonably designed to detect or prevent and prove fraud, waste, and abuse, based on indicia of fraud, waste, and abuse that have been reliably established through objective and unbiased data, and also be narrowly designed to minimize the negative impact on access to appropriate mental health and substance use disorder benefits.

(vi) *Prohibition on separate nonquantitative treatment limitations applicable only to mental health or substance use disorder benefits.* Consistent with paragraph (c)(2)(i) of this section, a group health plan (or health insurance coverage offered by an issuer in connection with such a plan) may not apply any nonquantitative treatment limitation that is applicable only with respect to mental health or substance use disorder benefits and does not apply with respect to any medical/surgical benefits in the same benefit classification.

(vii) *Effect of final determination of noncompliance under § 2590.712–1.* If a group health plan (or health insurance issuer offering group health insurance coverage in connection with such a plan) receives a final determination from the Secretary that the plan or issuer is not in compliance with the requirements of § 2590.712–1 with respect to a nonquantitative treatment limitation, the nonquantitative treatment limitation violates this paragraph (c)(4) and the Secretary may direct the plan or issuer not to impose the nonquantitative treatment limitation, unless and until the plan or issuer demonstrates to the Secretary

compliance with the requirements of this section or takes appropriate action to remedy the violation.

(viii) *Examples.* The rules of this paragraph (c)(4) are illustrated by the following examples. In each example, the group health plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits. Additionally, in examples that conclude that the plan or issuer violates one provision of this paragraph (c)(4), such examples do not necessarily imply compliance with other provisions of this paragraph (c)(4), as these examples do not analyze compliance with all other provisions of this paragraph (c)(4).

(A) *Example 1 (More restrictive prior authorization requirement in operation)*—(*1*) *Facts.* A plan requires prior authorization from the plan's utilization reviewer that a treatment is medically necessary for all inpatient, in-network medical/surgical benefits and for all inpatient, in-network mental health and substance use disorder benefits. While inpatient, in-network benefits for medical/surgical conditions are approved for periods of 1, 3, and 7 days, after which a treatment plan must be submitted by the patient's attending provider and approved by the plan, the approvals for 7 days are most common under this plan. For inpatient, in-network mental health and substance use disorder benefits, routine approval is most commonly given only for one day, after which a treatment plan must be submitted by the patient's attending provider and approved by the plan. The difference in the duration of approvals is not the result of independent professional medical or clinical standards or standards to detect or prevent and prove fraud, waste, and abuse, but rather reflects the application of a heightened standard to the provision of the mental health and substance use disorder benefits in the relevant classification.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(A) (*Example 1*), the plan violates the rules of paragraph (c)(4)(i) of this section. Under the terms of the plan, prior authorization applies to at least two-thirds of all medical/surgical benefits in the relevant classification (inpatient, in-network), since it applies to all benefits in the relevant classification. Further, the most common or frequent variation of the nonquantitative treatment limitation applied to medical/surgical benefits in the relevant classification (the predominant nonquantitative treatment limitation) is the routine approval of inpatient, in-network benefits for 7 days before the patient's attending provider must submit a treatment plan. However, the plan routinely approves inpatient, in-network benefits for mental health and substance use disorder conditions for only 1 day before the patient's attending provider must submit a treatment plan (and, in doing so, does not impartially apply independent professional medical or clinical standards or apply standards to detect or prevent and prove fraud, waste, and abuse that qualify for the exceptions in paragraph (c)(4)(i)(E) of this section). In operation, therefore, the prior authorization requirement imposed on inpatient, in-network mental health and substance use disorder benefits is more restrictive than the predominant prior authorization requirement applicable to substantially all medical/surgical benefits in the inpatient, in-network classification because the practice of approving only 1 day of inpatient benefits limits access to the full range of treatment options available for a condition or disorder under the plan or coverage as compared to the routine 7-day approval that is given for inpatient, in-network medical/surgical benefits. Because the plan violates the rules of paragraph (c)(4)(i) of this section, this example does not analyze compliance with paragraph (c)(4)(ii) or (iv) of this section.

(B) *Example 2 (More restrictive peer-to-peer concurrent review requirements in operation)*—(*1*) *Facts.* A plan follows a written process for the concurrent review of all medical/surgical benefits and mental health and substance use disorder benefits within the inpatient, in-network classification. Under the process, a first-level review is conducted in every instance in which concurrent review applies and an authorization request is approved by the first-level reviewer only if the clinical information submitted by the facility meets the plan's criteria for a continued stay. If the first-level reviewer is unable to approve the authorization request because the clinical information submitted by the facility does not meet the plan's criteria for a continued stay, it is sent to a second-level reviewer who will either approve or deny the request. While the written process only requires review by the second-level reviewer to either deny or approve the request, in operation, second-level reviewers for mental health and substance use disorder benefits conduct a peer-to-peer review with a provider (acting as the authorized representative of a participant or beneficiary) before coverage of the treatment is approved. The peer-to-peer review requirement is not the result of independent professional medical or clinical standards or standards to detect or prevent and prove fraud, waste, and abuse. The plan does not impose a peer-to-peer review, as written or in operation, as part of the second-level review for medical/surgical benefits.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(B) (*Example 2*), the plan violates the rules of paragraph (c)(4)(i) of this section. The concurrent review nonquantitative treatment limitation applies to at least two-thirds of all medical/surgical benefits within the inpatient, in-network classification because the plan follows the concurrent review process for all medical/surgical benefits. The most common or frequent variation of this nonquantitative treatment limitation (the predominant nonquantitative treatment limitation) applicable to substantially all medical/surgical benefits is that peer-to-peer review is not imposed as part of second-level review. The plan does not impartially apply independent professional medical or clinical standards or apply standards to detect or prevent and prove fraud, waste, and abuse that qualify for the exceptions in paragraph (c)(4)(i)(E) of this section. As written, the plan's concurrent review requirements are the same for medical/surgical benefits and mental health and substance use disorder benefits. However, in operation, by compelling an additional action (peer-to-peer review as part of second-level review) to access only mental health or substance use disorder benefits, the plan applies the limitation to mental health and substance use disorder benefits in a manner that is more restrictive than the predominant nonquantitative treatment limitation applied to substantially all medical/surgical benefits in the inpatient, in-network classification. Because the plan violates the rules of paragraph (c)(4)(i) of this section, this example does not analyze compliance with paragraph (c)(4)(ii) or (iv) of this section.

(C) *Example 3 (More restrictive peer-to-peer review medical necessity standard in operation; deviation from independent professional medical and clinical standards)*—(*1*) *Facts.* A plan generally requires that all treatment be medically necessary in the inpatient, out-of-network classification. For both medical/surgical benefits and mental health and substance use disorder benefits, the written medical necessity standards are based on independent professional medical or clinical standards that do not require peer-to-peer review. In operation, the plan covers out-of-network benefits for

medical/surgical or mental health inpatient treatment outside of a hospital if the physician documents medical appropriateness, but for out-of-network benefits for substance use disorder inpatient treatment outside of a hospital, the plan requires a physician to also complete peer-to-peer review.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(C) (*Example 3*), the plan violates the rules of paragraph (c)(4)(i) of this section. The medical necessity nonquantitative treatment limitation applies to at least two-thirds of all medical/surgical benefits in the inpatient, out-of-network classification. The most common or frequent variation of the nonquantitative treatment limitation (the predominant nonquantitative treatment limitation) applicable to substantially all medical/surgical benefits is the requirement that a physician document medical appropriateness without peer-to-peer review. The plan purports to impartially apply independent professional medical or clinical standards that would otherwise qualify for the exception in paragraph (c)(4)(i)(E) of this section, but deviates from those standards by imposing the additional requirement to complete peer-to-peer review for inpatient, out-of-network benefits for substance use disorder outside of a hospital. Therefore, the exception in paragraph (c)(4)(i)(E) of this section does not apply. As written, the plan provisions apply the nonquantitative treatment limitation to mental health and substance use disorder benefits in the inpatient, out-of-network classification in the same manner as for medical/surgical benefits. However, in operation, the nonquantitative treatment limitation imposed with respect to out-of-network substance use disorder benefits for treatment outside of a hospital is more restrictive than the predominant nonquantitative treatment limitation applied to substantially all medical/surgical benefits in the classification because it limits access to the full range of treatment options available for a condition or disorder under the plan or coverage as compared to medical/surgical benefits in the same classification. Because the plan violates the rules of paragraph (c)(4)(i) of this section, this example does not analyze compliance with paragraph (c)(4)(ii) or (iv) of this section.

(D) *Example 4 (Not comparable and more stringent methods for determining reimbursement rates in operation*)—(*1*) *Facts.* A plan's base reimbursement rates for outpatient, in-network providers are determined based on a variety of factors, including the providers' required training, licensure, and expertise. For purposes of this example, the plan's nonquantitative treatment limitations for determining reimbursement rates for mental health and substance use disorder benefits are not more restrictive than the predominant nonquantitative treatment limitation applied to substantially all medical/surgical benefits in the classification under paragraph (c)(4)(i) of this section. As written, for mental health, substance use disorder, and medical/surgical benefits, all reimbursement rates for physicians and non-physician practitioners for the same Current Procedural Terminology (CPT) code vary based on a combination of factors, such as the nature of the service, provider type, number of providers qualified to provide the service in a given geographic area, and market need (demand). As a result, reimbursement rates for mental health, substance use disorder, and medical/surgical benefits furnished by non-physician providers are generally less than for physician providers. In operation, the plan reduces the reimbursement rate for mental health and substance use disorder non-physician providers from that paid to mental health and substance use disorder physicians by the same percentage for every CPT code but does not apply the same reductions for non-physician medical/surgical providers.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(D) (*Example 4*), the plan violates the rules of paragraph (c)(4)(ii) of this section. Because the plan reimburses non-physician providers of mental health and substance use disorder services by reducing their reimbursement rate from the rate to physician providers by the same percentage for every CPT code but does not apply the same reductions to non-physician providers of medical/surgical services, in operation, the factors used in applying the nonquantitative treatment limitation to mental health and substance use disorder benefits are not comparable to, and are applied more stringently than, the factors used in applying the limitation with respect to medical/surgical benefits. Because the facts assume that the plan's methods for determining reimbursement rates comply with paragraph (c)(4)(i) of this section and the plan violates the rules of paragraph (c)(4)(ii) of this section, this example does not analyze compliance with paragraph (c)(4)(iv) of this section.

(E) *Example 5 (Exception for impartially applied generally recognized independent professional medical or clinical standards)*—(*1*) *Facts.* A group health plan develops a medical management requirement for all inpatient, out-of-network benefits for both medical/surgical benefits and mental health and substance use disorder benefits to ensure treatment is medically necessary. The medical management requirement impartially applies independent professional medical or clinical standards in a manner that qualifies for the exception in paragraph (c)(4)(i)(E) of this section. The plan does not rely on any other factors or evidentiary standards and the processes, strategies, evidentiary standards, and other factors used in designing and applying the medical management requirement to mental health and substance use disorder benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, and other factors used in designing and applying the requirement with respect to medical/surgical benefits. Within the inpatient, out-of-network classification, the application of the medical management requirement results in a higher percentage of denials for mental health and substance use disorder claims than medical/surgical claims, because the benefits were found to be medically necessary for a lower percentage of mental health and substance use disorder claims based on the impartial application of the independent professional medical or clinical standards by the nonquantitative treatment limitation.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(E) (*Example 5*), the plan does not violate the rules of this paragraph (c)(4). The medical management nonquantitative treatment limitation imposed on mental health and substance use disorder benefits does not violate paragraph (c)(4)(i) or (iv) of this section because it impartially applies independent professional medical or clinical standards for both medical/surgical benefits and mental health and substance use disorder benefits in a manner that qualifies for the exceptions in paragraphs (c)(4)(i)(E) and (c)(4)(iv)(D) of this section, respectively. Moreover, the nonquantitative treatment limitation does not violate paragraph (c)(4)(ii) of this section because the independent professional medical or clinical standards are not considered to be a discriminatory factor or evidentiary standard under paragraph (c)(4)(ii)(B) of this section. Additionally, as written and in operation, the processes, strategies, evidentiary standards, and other factors used in designing and applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in the inpatient, out-of-network classification are

comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, and other factors used in applying the limitation with respect to medical/surgical benefits in the classification, regardless of the fact that the application of the nonquantitative treatment limitation resulted in higher percentages of claim denials for mental health and substance use disorder benefits as compared to medical/surgical benefits.

(F) *Example 6 (More restrictive prior authorization requirement; exception for impartially applied generally recognized independent professional medical or clinical standards not met)*—(*1*) *Facts.* The provisions of a plan state that it applies independent professional medical and clinical standards (consistent with generally accepted standards of care) for setting prior authorization requirements for both medical/surgical and mental health and substance use disorder prescription drugs. The relevant generally recognized independent professional medical standard for treatment of opioid use disorder that the plan utilizes—in this case, the American Society of Addiction Medicine national practice guidelines—does not support prior authorization every 30 days for buprenorphine/naloxone. However, in operation, the plan requires prior authorization for buprenorphine/naloxone combination at each refill (every 30 days) for treatment of opioid use disorder.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(F) (*Example 6*), the plan violates the rules of paragraph (c)(4)(i) of this section. The plan does not qualify for the exception in paragraph (c)(4)(i)(E) of this section, because, although the provisions of the plan state that it applies independent professional medical and clinical standards, the plan deviates from the relevant standards with respect to prescription drugs to treat opioid use disorder. The prior authorization nonquantitative treatment limitation is applied to at least two-thirds of all medical/surgical benefits in the prescription drugs classification. The most common or frequent variation of this nonquantitative treatment limitation (the predominant nonquantitative treatment limitation) applicable to substantially all medical/surgical benefits is following generally recognized independent professional medical and clinical standards (consistent with generally accepted standards of care). The prior authorization requirements imposed on substance use disorder benefits are more restrictive than the predominant nonquantitative treatment limitation applicable to substantially all medical/surgical benefits in the classification, because the plan imposes additional requirements on substance use disorder benefits that limit access to the full range of treatment options available for a condition or disorder under the plan or coverage as compared to medical/surgical benefits in the same classification. Because the plan violates the rules of paragraph (c)(4)(i) of this section, this example does not analyze compliance with paragraph (c)(4)(ii) or (iv) of this section.

(G) *Example 7 (Impermissible nonquantitative treatment limitation imposed following a final determination of noncompliance and direction by the Secretary)*—(*1*) *Facts.* Following an initial request by the Secretary for a plan's comparative analysis of a nonquantitative treatment limitation pursuant to § 2590.712–1(d), the plan submits a comparative analysis for the nonquantitative treatment limitation. After review of the comparative analysis, the Secretary makes an initial determination that the comparative analysis fails to demonstrate that the processes, strategies, evidentiary standards, and other factors used in designing and applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in the relevant classification are comparable to, and applied no more stringently than, those used in designing and applying the limitation to medical/surgical benefits in the classification. Pursuant to § 2590.712–1(d)(3), the plan submits a corrective action plan and additional comparative analyses within 45 calendar days after the initial determination, and the Secretary then determines that the additional comparative analyses do not demonstrate compliance with the requirements of this paragraph (c)(4). The plan receives a final determination of noncompliance from the Secretary, which informs the plan that it is not in compliance with this paragraph (c)(4) and directs the plan not to impose the nonquantitative treatment limitation by a certain date, unless and until the plan demonstrates compliance to the Secretary or takes appropriate action to remedy the violation. The plan makes no changes to its plan terms by that date and continues to impose the nonquantitative treatment limitation.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(G) (*Example 7*), the plan violates the requirements of this paragraph (c)(4) by imposing the nonquantitative treatment limitation after the Secretary directs the plan not to impose it, pursuant to paragraph (c)(4)(vii) of this section.

(H) *Example 8 (Provider network admission standards not more restrictive and compliant with requirements for design and application of NQTLs)*—(*1*) *Facts.* As part of a plan's standards for provider admission to its network, in the outpatient, in-network classification, any provider seeking to contract with the plan must have a certain number of years of supervised clinical experience. As a result of that standard, master's level mental health therapists are required to obtain supervised clinical experience beyond their licensure, while master's level medical/surgical providers, psychiatrists, and Ph.D.-level psychologists do not require additional experience beyond their licensure because their licensure already requires supervised clinical experience. The plan collects and evaluates relevant data in a manner reasonably designed to assess the impact of the nonquantitative treatment limitation. This includes in-network and out-of-network utilization rates (including data related to provider claim submissions), network adequacy metrics (including time and distance data, and data on providers accepting new patients), and provider reimbursement rates (including as compared to billed charges). This data demonstrates that participants and beneficiaries seeking outpatient care are able to access outpatient, in-network mental health and substance use disorder providers at the same frequency as outpatient, in-network medical/surgical providers, that mental health and substance use disorder providers are active in the network and are accepting new patients to the same extent as medical/surgical providers, and that mental health and substance use disorder providers are within similar time and distances to plan participants and beneficiaries as are medical/surgical providers. This data also does not identify material differences in what the plan or issuer pays psychiatrists or non-physician mental health providers, compared to physicians or non-physician medical/surgical providers, respectively, both for the same reimbursement codes and as compared to Medicare rates.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(H) (*Example 8*), the plan does not violate this paragraph (c)(4). The standards for this nonquantitative treatment limitation, namely provider admission to the plan's network, are applied to at least two-thirds of all medical/surgical benefits in the outpatient, in-network classification, as it applies to all medical/surgical benefits in the classification. The most

common or frequent variation of this nonquantitative treatment limitation (the predominant nonquantitative treatment limitation) that applies to substantially all medical/surgical benefits in the classification is having a certain number of years of supervised clinical experience. The standards for provider admission to the plan's network that are imposed with respect to mental health or substance use disorder benefits are no more restrictive, as written or in operation, than the predominant variation of the nonquantitative treatment limitation applicable to substantially all medical/surgical benefits in the classification, because the standards do not limit access to the full range of treatment options available for a condition or disorder under the plan or coverage as compared to medical/surgical benefits in the same classification. The requirement that providers have a certain number of years of supervised clinical experience that the plan relied upon to design and apply the nonquantitative treatment limitation is not considered to discriminate against mental health or substance use disorder benefits, even though this results in the requirement that master's level mental health therapists obtain supervised clinical experience beyond their licensure, unlike master's level medical/surgical providers. In addition, as written and in operation, the processes, strategies, evidentiary standards, or other factors used in applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical/surgical benefits in the classification, because the plan applies the same standard to all providers in the classification. Finally, the plan or issuer collects and evaluates relevant data in a manner reasonably designed to assess the impact of the nonquantitative treatment limitation on access to mental health and substance use disorder benefits, which does not show material differences in access to in-network mental health and substance use disorder benefits as compared to in-network medical/surgical benefits in the classification.

(I) *Example 9 (More restrictive requirement for primary caregiver participation applied to ABA therapy)*—(*1*) *Facts.* A plan generally applies medical necessity criteria in adjudicating claims for coverage of all outpatient, in-network medical/surgical and mental health and substance use disorder benefits, including ABA therapy for the treatment of ASD, which is a mental health condition. The plan's medical necessity criteria for coverage of ABA therapy requires evidence that the participant's or beneficiary's primary caregivers actively participate in ABA therapy, as documented by consistent attendance in parent, caregiver, or guardian training sessions. In adding this requirement, the plan deviates from independent professional medical or clinical standards, and there are no similar medical necessity criteria requiring evidence of primary caregiver participation in order to receive coverage of any medical/surgical benefits.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(I) (*Example 9*), the plan violates paragraph (c)(4)(i) of this section. The plan applies medical necessity criteria to at least two-thirds of all outpatient, in-network medical/surgical benefits, as they apply to all medical/surgical benefits in the classification. The most common or frequent variation of this nonquantitative treatment limitation (the predominant nonquantitative treatment limitation) that applies to substantially all medical/surgical benefits in the classification does not include the requirement to provide evidence that the participant's or beneficiary's primary caregivers actively participate in the treatment. The plan does not qualify for the exception in paragraph (c)(4)(i)(E) of this section in applying its restriction on coverage for ABA therapy because the plan deviates from the independent professional medical or clinical standards by imposing a different requirement. As a result, the nonquantitative treatment limitation imposed on mental health and substance use disorder benefits is more restrictive than the predominant medical necessity requirement imposed on substantially all medical/surgical benefits in the classification (which does not include the requirement to provide evidence that primary caregivers actively participate in treatment). Because the plan violates the rules of paragraph (c)(4)(i) of this section, this example does not analyze compliance with paragraph (c)(4)(ii) or (iv) of this section.

(J) *Example 10 (More restrictive exclusion for experimental or investigative treatment applied to ABA therapy)*—(*1*) *Facts.* A plan, as written, generally excludes coverage for all treatments that are experimental or investigative for both medical/surgical benefits and mental health and substance use disorder benefits in the outpatient, in-network classification. As a result, the plan generally excludes experimental treatment of medical conditions and surgical procedures, mental health conditions, and substance use disorders when no professionally recognized treatment guidelines define clinically appropriate standards of care for the condition or disorder and fewer than two randomized controlled trials are available to support the treatment's use with respect to the given condition or disorder. The plan provides benefits for the treatment of ASD, which is a mental health condition, but, in operation, the plan excludes coverage for ABA therapy to treat children with ASD, deeming it experimental. More than one professionally recognized treatment guideline defines clinically appropriate standards of care for ASD and more than two randomized controlled trials are available to support the use of ABA therapy to treat certain children with ASD.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(J) (*Example 10*), the plan violates the rules of paragraph (c)(4)(i) of this section. The coverage exclusion for experimental or investigative treatment applies to at least two-thirds of all medical/surgical benefits, as it applies to all medical/surgical benefits in the outpatient, in-network classification. The most common or frequent variation of this nonquantitative treatment limitation in the classification (the predominant nonquantitative treatment limitation) applicable to substantially all medical/surgical benefits is the exclusion under the plan for coverage of experimental treatment of medical/surgical conditions when no professionally recognized treatment guidelines define clinically appropriate standards of care for the condition or disorder and fewer than two randomized controlled trials are available to support the treatment's use with respect to the given condition or procedure. In operation, the exclusion for experimental or investigative treatment imposed on ABA therapy is more restrictive than the predominant variation of the nonquantitative treatment limitation for experimental or investigative treatment imposed on substantially all medical/surgical benefits in the classification because the exclusion limits access to the full range of treatment options available for a condition or disorder under the plan or coverage as compared to medical/surgical benefits in the same classification. Because the plan violates the rules of paragraph (c)(4)(i) of this section, this example does not analyze

compliance with paragraph (c)(4)(ii) or (iv) of this section.

(K) *Example 11 (Separate EAP exhaustion treatment limitation applicable only to mental health benefits)*—(*1*) *Facts.* An employer maintains both a major medical plan and an employee assistance program (EAP). The EAP provides, among other benefits, a limited number of mental health or substance use disorder counseling sessions, which, together with other benefits provided by the EAP, are not significant benefits in the nature of medical care. Participants are eligible for mental health or substance use disorder benefits under the major medical plan only after exhausting the counseling sessions provided by the EAP. No similar exhaustion requirement applies with respect to medical/surgical benefits provided under the major medical plan.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(K) (*Example 11*), limiting eligibility for mental health and substance use disorder benefits under the major medical plan until EAP benefits are exhausted is a nonquantitative treatment limitation subject to the parity requirements of this paragraph (c). Because the limitation does not apply to medical/surgical benefits, it is a separate nonquantitative treatment limitation applicable only to mental health and substance use disorder benefits that violates paragraph (c)(4)(vi) of this section. Additionally, this EAP would not qualify as excepted benefits under § 2590.732(c)(3)(vi)(B)(*1*) because participants in the major medical plan are required to use and exhaust benefits under the EAP (making the EAP a gatekeeper) before an individual is eligible for benefits under the plan.

(L) *Example 12 (Separate residential exclusion treatment limitation applicable only to mental health benefits)*—(*1*) *Facts.* A plan generally covers inpatient, in-network and inpatient out-of-network treatment in any setting, including skilled nursing facilities and rehabilitation hospitals, provided other medical necessity standards are satisfied. The plan also has an exclusion for residential treatment, which the plan defines as an inpatient benefit, for mental health and substance use disorder benefits. This exclusion was not generated through any broader nonquantitative treatment limitation (such as medical necessity or other clinical guideline).

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(L) (*Example 12*), the plan violates the rules of paragraph (c)(4)(vi) of this section. Because the plan does not apply a comparable exclusion to inpatient benefits for medical/surgical conditions, the exclusion of residential treatment is a separate nonquantitative treatment limitation applicable only to mental health and substance use disorder benefits in the inpatient, in-network and inpatient, out-of-network classifications that does not apply with respect to any medical/surgical benefits in the same benefit classification.

(M) *Example 13 (Standards for provider admission to a network)*—(*1*) *Facts.* A plan applies nonquantitative treatment limitations related to network composition in the outpatient in-network and inpatient, in-network classifications. The plan's networks are constructed by separate service providers for medical/surgical benefits and mental health and substance use disorder benefits. For purposes of this example, these facts assume that these nonquantitative treatment limitations related to network composition for mental health and substance use disorder benefits are not more restrictive than the predominant nonquantitative treatment limitations applied to substantially all medical/surgical benefits in the classifications under paragraph (c)(4)(i) of this section. The facts also assume that, as written and in operation, the processes, strategies, evidentiary standards, and other factors used in designing and applying the nonquantitative treatment limitations related to network access to mental health or substance use disorder benefits in the outpatient in-network and inpatient in-network classifications are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, and other factors used in designing and applying the nonquantitative treatment limitations with respect to medical/surgical benefits in the classifications, as required under paragraph (c)(4)(ii) of this section. The plan collects and evaluates all relevant data in a manner reasonably designed to assess the impact of the nonquantitative treatment limitations related to network composition on access to mental health and substance use disorder benefits as compared with access to medical/surgical benefits and considers the impact as part of the plan's or issuer's analysis of whether the standards, in operation, comply with paragraphs (c)(4)(i) and (ii) of this section. The plan determined that the data did not reveal any material differences in access. That data included metrics relating to the time and distance from plan participants and beneficiaries to network providers in rural and urban regions; the number of network providers accepting new patients; the proportions of mental health and substance use disorder and medical/surgical providers and facilities that provide services in rural and urban regions who are in the plan's network; provider reimbursement rates; in-network and out-of-network utilization rates (including data related to the dollar value and number of provider claims submissions); and survey data from participants on the extent to which they forgo or pay out-of-pocket for treatment because of challenges finding in-network providers. The efforts the plan made when designing and applying its nonquantitative treatment limitations related to network composition, which ultimately led to its outcomes data not revealing any material differences in access to benefits for mental health or substance use disorders as compared with medical/surgical benefits, included making sure that the plan's service providers are making special efforts to enroll available providers, including by authorizing greater compensation or other inducements to the extent necessary, and expanding telehealth arrangements as appropriate to manage regional shortages. The plan also notifies participants in clear and prominent language on its website, employee brochures, and the summary plan description of a toll-free number available to help participants find in-network providers. In addition, when plan participants submit bills for out-of-network items and services, the plan directs their service providers to reach out to the treating providers and facilities to see if they will enroll in the network.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(M) (*Example 13*), the plan does not violate this paragraph (c)(4). As stated in the Facts section, the plan's nonquantitative treatment limitations related to network composition comply with the rules of paragraphs (c)(4)(i) and (ii) of this section. The plan collects and evaluates relevant data, as required under paragraph (c)(4)(iv)(A) of this section, and the data does not reveal any material differences in access to mental health and substance use disorder benefits as compared to medical/surgical benefits, as a result of the actions the plan took (as set forth in the facts) when initially designing its nonquantitative treatment limitations related to network composition. Because the plan takes comparable actions to ensure that their mental health and substance use disorder provider network is as accessible as their medical/surgical provider network and

exercises careful oversight over both their service providers and the comparative robustness of the networks with an eye to ensuring that network composition results in access to in-network benefits for mental health and substance use disorder services that is as generous as for medical/surgical services, plan participants and beneficiaries can access covered mental health and substance use disorder services and benefits as readily as medical/surgical benefits. This is reflected in the plan's carefully designed metrics and assessment of network composition.

* * * * *

(d) * * *

(3) *Provisions of other law.* Compliance with the disclosure requirements in paragraphs (d)(1) and (2) of this section is not determinative of compliance with any other provision of applicable Federal or State law. In particular, in addition to those disclosure requirements, provisions of other applicable law require disclosure of information relevant to medical/surgical, mental health, and substance use disorder benefits. For example, ERISA section 104 and § 2520.104b–1 of this chapter provide that, for plans subject to ERISA, instruments under which the plan is established or operated must generally be furnished to plan participants within 30 days of request. Instruments under which the plan is established or operated include documents with information on medical necessity criteria for both medical/surgical benefits and mental health and substance use disorder benefits; the processes, strategies, evidentiary standards, and other factors used to apply a nonquantitative treatment limitation with respect to medical/surgical benefits and mental health or substance use disorder benefits under the plan; and the comparative analyses and other applicable information required by § 2590.712–1. In addition, § 2560.503–1 of this chapter and § 2590.715–2719 set forth rules regarding claims and appeals, including the right of claimants (or their authorized representative) upon appeal of an adverse benefit determination (or a final internal adverse benefit determination) to be provided upon request and free of charge, reasonable access to and copies of all documents, records, and other information relevant to the claimant's claim for benefits. This includes documents with information on medical necessity criteria for both medical/surgical benefits and mental health and substance use disorder benefits, as well as the processes, strategies, evidentiary standards, and other factors used to apply a nonquantitative treatment limitation with respect to medical/surgical benefits and mental health or substance use disorder benefits under the plan and the comparative analyses and other applicable information required by § 2590.712–1.

(e)

* * * * *

(4) *Coordination with EHB requirements.* Nothing in paragraph (f) or (g) of this section or § 2590.712–1(g) changes the requirements of 45 CFR 147.150 and 156.115, providing that a health insurance issuer offering non-grandfathered health insurance coverage in the individual or small group market providing mental health and substance use disorder services, including behavioral health treatment services, as part of essential health benefits required under 45 CFR 156.110(a)(5) and 156.115(a), must comply with the requirements under section 2726 of the Public Health Service Act and its implementing regulations to satisfy the requirement to provide coverage for mental health and substance use disorder services, including behavioral health treatment, as part of essential health benefits.

* * * * *

(i) * * *

(1) *In general.* Except as provided in paragraph (i)(2) of this section, this section applies to group health plans and health insurance issuers offering group health insurance coverage on the first day of the first plan year beginning on or after January 1, 2025. Until the applicability date in the preceding sentence, plans and issuers are required to continue to comply with 29 CFR 2590.712, revised as of July 1, 2022.

* * * * *

(j) *Severability.* If any provision of this section is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of invalidity or unenforceability, in which event the provision shall be severable from this section and shall not affect the remainder thereof or the application of the provision to persons not similarly situated or to dissimilar circumstances.

■ 6. Add § 2590.712–1 to read as follows:

§ 2590.712–1 Nonquantitative treatment limitation comparative analysis requirements.

(a) *Meaning of terms.* Unless otherwise stated in this section, the terms of this section have the meanings indicated in § 2590.712(a)(2).

(b) *In general.* In the case of a group health plan (or health insurance issuer offering group health insurance coverage in connection with a group health plan) that provides both medical/surgical benefits and mental health or substance use disorder benefits and that imposes any nonquantitative treatment limitation on mental health or substance use disorder benefits, the plan or issuer must perform and document a comparative analysis of the design and application of each nonquantitative treatment limitation applicable to mental health or substance use disorder benefits. Each comparative analysis must comply with the content requirements of paragraph (c) of this section and be made available to the Secretary, upon request, in the manner required by paragraphs (d) and (e) of this section.

(c) *Comparative analysis content requirements.* With respect to each nonquantitative treatment limitation applicable to mental health or substance use disorder benefits under a group health plan (or health insurance coverage offered in connection with a group health plan), the comparative analysis performed by the plan or issuer must include, at minimum, the elements specified in this paragraph (c). In addition to the comparative analysis for each nonquantitative treatment limitation, each plan or issuer must prepare and make available to the Secretary, upon request, a written list of all nonquantitative treatment limitations imposed under the plan or coverage and a general description of any information considered or relied upon by the plan or issuer in preparing the comparative analysis for each nonquantitative treatment limitation. This list and general description must be provided to the named fiduciaries of the plan who are required to review the findings or conclusions of each comparative analysis, as required under paragraph (c)(6)(vi) of this section.

(1) *Description of the nonquantitative treatment limitation.* The comparative analysis must include, with respect to the nonquantitative treatment limitation that is the subject of the comparative analysis:

(i) Identification of the nonquantitative treatment limitation, including the specific terms of the plan or coverage or other relevant terms regarding the nonquantitative treatment

limitation, the policies or guidelines (internal or external) in which the nonquantitative treatment limitation appears or is described, and the applicable sections of any other relevant documents, such as provider contracts, that describe the nonquantitative treatment limitation;

(ii) Identification of all mental health or substance use disorder benefits and medical/surgical benefits to which the nonquantitative treatment limitation applies, including a list of which benefits are considered mental health or substance use disorder benefits and which benefits are considered medical/surgical benefits;

(iii) A description of which benefits are included in each classification set forth in § 2590.712(c)(2)(ii)(A); and

(iv) Identification of the predominant nonquantitative treatment limitation applicable to substantially all medical/surgical benefits in each classification, including an explanation of how the plan or issuer determined which variation is the predominant nonquantitative treatment limitation as compared to other variations, as well as how the plan identified the variations of the nonquantitative treatment limitation.

(2) *Identification and definition of the factors used to design or apply the nonquantitative treatment limitation.* The comparative analysis must include, with respect to every factor considered or relied upon to design the nonquantitative treatment limitation or apply the nonquantitative treatment limitation to mental health or substance use disorder benefits and medical/surgical benefits:

(i) Identification of all of the factors considered, as well as the evidentiary standards considered or relied upon to design or apply each factor and the sources from which each evidentiary standard was derived, in determining which mental health or substance use disorder benefits and which medical/surgical benefits are subject to the nonquantitative treatment limitation; and

(ii) A definition of each factor, including:

(A) A detailed description of the factor; and

(B) A description of each evidentiary standard (and the source of each evidentiary standard) identified under paragraph (c)(2)(i) of this section.

(3) *Description of how factors are used in the design and application of the nonquantitative treatment limitation.* The comparative analysis must include a description of how each factor identified and defined pursuant to paragraph (c)(2) of this section is used in the design or application of the nonquantitative treatment limitation to mental health and substance use disorder benefits and medical/surgical benefits in a classification, including:

(i) A detailed explanation of how each factor identified and defined in paragraph (c)(2) of this section is used to determine which mental health or substance use disorder benefits and which medical/surgical benefits are subject to the nonquantitative treatment limitation;

(ii) An explanation of the evidentiary standards or other information or sources (if any) considered or relied upon in designing or applying the factors or relied upon in designing and applying the nonquantitative treatment limitation, including in the determination of whether and how mental health or substance use disorder benefits or medical/surgical benefits are subject to the nonquantitative treatment limitation;

(iii) If the application of the factor depends on specific decisions made in the administration of benefits, the nature of the decisions, the timing of the decisions, and the professional designation and qualifications of each decision maker;

(iv) If more than one factor is identified and defined in paragraph (c)(2) of this section, an explanation of:

(A) How all of the factors relate to each other;

(B) The order in which all the factors are applied, including when they are applied;

(C) Whether and how any factors are given more weight than others; and

(D) The reasons for the ordering or weighting of the factors; and

(v) Any deviation(s) or variation(s) from a factor, its applicability, or its definition (including the evidentiary standards used to define the factor and the information or sources from which each evidentiary standard was derived), such as how the factor is used differently to apply the nonquantitative treatment limitation to mental health or substance use disorder benefits as compared to medical/surgical benefits, and a description of how the plan or issuer establishes such deviation(s) or variation(s).

(4) *Demonstration of comparability and stringency as written.* The comparative analysis must evaluate whether, in any classification, under the terms of the plan (or health insurance coverage) as written, any processes, strategies, evidentiary standards, or other factors used in designing and applying the nonquantitative treatment limitation to mental health or substance use disorder benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in designing and applying the nonquantitative treatment limitation with respect to medical/surgical benefits. The comparative analysis must include, with respect to the nonquantitative treatment limitation and the factors used in designing and applying the nonquantitative treatment limitation:

(i) Documentation of each factor identified and defined in paragraph (c)(2) of this section that was applied to determine whether the nonquantitative treatment limitation applies to mental health or substance use disorder benefits and medical/surgical benefits in a classification, including, as relevant:

(A) Quantitative data, calculations, or other analyses showing whether, in each classification in which the nonquantitative treatment limitation applies, mental health or substance use disorder benefits and medical/surgical benefits met or did not meet any applicable threshold identified in the relevant evidentiary standard, and the evaluation of relevant data as required under § 2590.712(c)(4)(iv)(A), to determine that the nonquantitative treatment limitation would or would not apply; and

(B) Records maintained by the plan or issuer documenting the consideration and application of all factors and evidentiary standards, as well as the results of their application;

(ii) In each classification in which the nonquantitative treatment limitation applies to mental health or substance use disorder benefits, a comparison of how the nonquantitative treatment limitation, as written, is applied to mental health or substance use disorder benefits and to medical/surgical benefits, including the specific provisions of any forms, checklists, procedure manuals, or other documentation used in designing and applying the nonquantitative treatment limitation or that address the application of the nonquantitative treatment limitation;

(iii) Documentation demonstrating how the factors are comparably applied, as written, to mental health or substance use disorder benefits and medical/surgical benefits in each classification, to determine which benefits are subject to the nonquantitative treatment limitation; and

(iv) An explanation of the reason(s) for any deviation(s) or variation(s) in the application of a factor used to apply the nonquantitative treatment limitation, or the application of the nonquantitative treatment limitation, to mental health or

substance use disorder benefits as compared to medical/surgical benefits, and how the plan or issuer establishes such deviation(s) or variation(s), including:

(A) In the definition of the factors, the evidentiary standards used to define the factors, and the sources from which the evidentiary standards were derived;

(B) In the design of the factors or evidentiary standards; or

(C) In the application or design of the nonquantitative treatment limitation.

(5) *Demonstration of comparability and stringency in operation.* The comparative analysis must evaluate whether, in any classification, under the terms of the plan (or health insurance coverage) in operation, the processes, strategies, evidentiary standards, or other factors used in designing and applying the nonquantitative treatment limitation to mental health or substance use disorder benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in designing and applying the limitation with respect to medical/surgical benefits. The comparative analysis must include, with respect to the nonquantitative treatment limitation and the factors used in designing and applying the nonquantitative treatment limitation:

(i) A comprehensive explanation of how the plan or issuer ensures that, in operation, the processes, strategies, evidentiary standards, or other factors used in designing and applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in a classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in designing and applying the nonquantitative treatment limitation with respect to medical/surgical benefits, including:

(A) An explanation of any methodology and underlying data used to demonstrate the application of the nonquantitative treatment limitation, in operation; and

(B) The sample period, inputs used in any calculations, definitions of terms used, and any criteria used to select the mental health or substance use disorder benefits and medical/surgical benefits to which the nonquantitative treatment limitation is applicable;

(ii) Identification of the relevant data collected and evaluated as required under § 2590.712(c)(4)(iv)(A);

(iii) An evaluation of the outcomes that resulted from the application of the nonquantitative treatment limitation to mental health or substance use disorder benefits and medical/surgical benefits, including the relevant data as required under § 2590.712(c)(4)(iv)(A);

(iv) A detailed explanation of material differences in outcomes evaluated pursuant to paragraph (c)(5)(iii) of this section that are not attributable to differences in the comparability or relative stringency of the nonquantitative treatment limitation as applied to mental health or substance use disorder benefits and medical/surgical benefits and the bases for concluding that material differences in outcomes are not attributable to differences in the comparability or relative stringency of the nonquantitative treatment limitation; and

(v) A discussion of any measures that have been or are being implemented by the plan or issuer to mitigate any material differences in access to mental health or substance use disorder benefits as compared to medical/surgical benefits, including the actions the plan or issuer is taking under § 2590.712(c)(4)(iv)(B)(*1*) to address material differences to ensure compliance with § 2590.712(c)(4)(i) and (ii).

(6) *Findings and conclusions.* The comparative analysis must address the findings and conclusions as to the comparability of the processes, strategies, evidentiary standards, and other factors used in designing and applying the nonquantitative treatment limitation to mental health or substance use disorder benefits and medical/surgical benefits within each classification, and the relative stringency of their application, both as written and in operation, and include:

(i) Any findings or conclusions indicating that the plan or coverage is not (or might not be) in compliance with the requirements of § 2590.712(c)(4), including any actions the plan or issuer has taken or intends to take to address any potential areas of concern or noncompliance;

(ii) A reasoned and detailed discussion of the findings and conclusions described in paragraph (c)(6)(i) of this section;

(iii) Citations to any additional specific information not otherwise included in the comparative analysis that supports the findings and conclusions described in paragraph (c)(6)(i) of this section;

(iv) The date of the analysis and the title and credentials of all relevant persons who participated in the performance and documentation of the comparative analysis;

(v) If the comparative analysis relies upon an evaluation by a reviewer or consultant considered by the plan or issuer to be an expert, an assessment of each expert's qualifications and the extent to which the plan or issuer ultimately relied upon each expert's evaluation in performing and documenting the comparative analysis of the design and application of each nonquantitative treatment limitation applicable to both mental health or substance use disorder benefits and medical/surgical benefits; and

(vi) A certification by one or more named fiduciaries who have reviewed the comparative analysis stating whether they found the comparative analysis to be in compliance with the content requirements of paragraph (c) of this section.

(d) *Requirements related to submission of comparative analyses to the Secretary upon request*—(1) *Initial request by the Secretary for comparative analysis.* A group health plan or health insurance issuer offering group health insurance coverage must make the comparative analysis required by paragraph (b) of this section available and submit it to the Secretary within 10 business days of receipt of a request from the Secretary (or an additional period of time specified by the Secretary).

(2) *Additional information required after a comparative analysis is deemed to be insufficient.* In instances in which the Secretary determines that the plan or issuer has not submitted sufficient information under paragraph (d)(1) of this section for the Secretary to review the comparative analysis required in paragraph (b) of this section, the Secretary will specify to the plan or issuer the additional information the plan or issuer must submit to the Secretary to be responsive to the request under paragraph (d)(1) of this section. Any such information must be provided to the Secretary by the plan or issuer within 10 business days after the Secretary specifies the additional information to be submitted (or an additional period of time specified by the Secretary).

(3) *Initial determination of noncompliance, required action, and corrective action plan.* In instances in which the Secretary reviewed the comparative analysis submitted under paragraph (d)(1) of this section and any additional information submitted under paragraph (d)(2) of this section, and made an initial determination that the plan or issuer is not in compliance with the requirements of § 2590.712(c)(4) or this section, the plan or issuer must respond to the Secretary and specify the actions the plan or issuer will take to bring the plan or coverage into

compliance, and provide to the Secretary additional comparative analyses meeting the requirements of paragraph (b) of this section that demonstrate compliance with § 2590.712(c)(4) and this section, not later than 45 calendar days after the Secretary's initial determination that the plan or issuer is not in compliance.

(4) *Requirement to notify participants and beneficiaries of final determination of noncompliance*—(i) *In general.* If the Secretary makes a final determination of noncompliance, the plan or issuer must notify all participants and beneficiaries enrolled in the plan or coverage that the plan or issuer has been determined to not be in compliance with the requirements of § 2590.712(c)(4) or this section with respect to such plan or coverage. Such notice must be provided within 7 calendar days of receipt of the final determination of noncompliance, and the plan or issuer must provide a copy of the notice to the Secretary, and any service provider involved in the claims process, and any fiduciary responsible for deciding benefit claims within the same time frame.

(ii) *Content of notice.* The notice to participants and beneficiaries required in paragraph (d)(4)(i) of this section shall be written in a manner calculated to be understood by the average plan participant and must include, in plain language, the following information in a standalone notice:

(A) The following statement prominently displayed on the first page, in no less than 14-point font: ''Attention! The Department of Labor has determined that [insert the name of group health plan or health insurance issuer] is not in compliance with the Mental Health Parity and Addiction Equity Act.'';

(B) A summary of changes the plan or issuer has made as part of its corrective action plan specified to the Secretary following the initial determination of noncompliance, including an explanation of any opportunity for a participant or beneficiary to have a claim for benefits reprocessed;

(C) A summary of the Secretary's final determination that the plan or issuer is not in compliance with § 2590.712(c)(4) or this section, including any provisions or practices identified as being in violation of MHPAEA, additional corrective actions identified by the Secretary in the final determination notice, and information on how participants and beneficiaries can obtain from the plan or issuer a copy of the final determination of noncompliance;

(D) Any additional actions the plan or issuer is taking to come into compliance with § 2590.712(c)(4) or this section, when the plan or issuer will take such actions, and a clear and accurate statement explaining whether the Secretary has indicated that those actions, if completed, will result in compliance; and

(E) Contact information for questions and complaints, and a statement explaining how participants and beneficiaries can obtain more information about the notice, including:

(*1*) The plan's or issuer's phone number and an email or web portal address; and

(*2*) The Employee Benefits Security Administration's phone number and email or web portal address.

(iii) *Manner of notice.* The plan or issuer must make the notice required under paragraph (d)(4)(i) of this section available in paper form, or electronically (such as by email or an internet posting) if:

(A) The format is readily accessible;

(B) The notice is provided in paper form free of charge upon request; and

(C) In a case in which the electronic form is an internet posting, the plan or issuer timely notifies the participant or beneficiary in paper form (such as a postcard) or email, that the documents are available on the internet, provides the internet address, includes the statement required in paragraph (d)(4)(ii)(A) of this section, and notifies the participant or beneficiary that the documents are available in paper form upon request.

(e) *Requests for a copy of a comparative analysis.* In addition to making a comparative analysis available upon request to the Secretary, a plan or issuer must make available a copy of the comparative analysis required by paragraph (b) of this section when requested by:

(1) Any applicable State authority;

(2) A participant or beneficiary (or a provider or other person acting as a participant's or beneficiary's authorized representative) who has received an adverse benefit determination related to mental health or substance use disorder benefits; and

(3) Participants and beneficiaries, who may request the comparative analysis at any time under ERISA section 104.

(f) *Rule of construction.* Nothing in this section or § 2590.712 shall be construed to prevent the Secretary from acting within the scope of existing authorities to address violations of § 2590.712 or this section.

(g) *Applicability.* The provisions of this section apply to group health plans and health insurance issuers offering group health insurance coverage described in § 2590.712(e), to the extent the plan or issuer is not exempt under § 2590.712(f) or (g), for plan years beginning on or after January 1, 2025.

(h) *Severability.* If any provision of this section is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of invalidity or unenforceability, in which event the provision shall be severable from this section and shall not affect the remainder thereof or the application of the provision to persons not similarly situated or to dissimilar circumstances.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

For the reasons set forth in the preamble, the Department of Health and Human Services proposes to amend 45 CFR parts 146 and 147 as set forth below:

PART 146—REQUIREMENTS FOR THE GROUP HEALTH INSURANCE MARKET

■ 7. The authority citation for part 146 continues to read as follows:

Authority: 42 U.S.C. 300gg–1 through 300gg–5, 300gg–11 through 300gg–23, 300gg–91, and 300gg–92.

■ 8. Amend § 146.136 is amended by:

■ a. Redesignating paragraph (a) as paragraph (a)(2) and adding paragraphs (a) heading and (a)(1);

■ b. In newly redesignated paragraph (a)(2):

■ i. Revising the introductory text;

■ ii. Adding the definitions of ''DSM,'' ''Evidentiary standards,'' ''Factors,'' and ''ICD'' in alphabetical order;

■ iii. Revising the definitions of ''Medical/surgical benefits'' and ''Mental health benefits'';

■ iv. Adding the definitions of ''Processes'' and ''Strategies'' in alphabetical order; and

■ v. Revising the definitions of ''Substance use disorder benefits'' and ''Treatment limitations'';

■ c. Revising paragraphs (c)(1)(ii), (c)(2)(i), and (c)(2)(ii)(A) introductory text;

■ d. In paragraph (c)(2)(ii)(C), designating *Examples 1* through *4* as paragraphs (c)(2)(ii)(C)(*1*) through (*4*) and revising newly designated paragraphs (c)(2)(ii)(C)(*1*) through (*4*);

■ e. Adding paragraphs (c)(2)(ii)(C)(*5*) and (*6*);

■ f. Revising paragraphs (c)(3)(i)(A), (C), and (D);

■ g. In paragraph (c)(3)(iii), adding introductory text;

■ h. Revising paragraphs (c)(3)(iii)(A) and (B), (c)(3)(iv), (c)(4), (d)(3), (e)(4), and (i)(1); and
■ I, Adding paragraph (j).

The revisions and additions read as follows:

§ 146.136 Parity in mental health and substance use disorder benefits.

(a) *Purpose and meaning of terms*—(1) *Purpose.* This section and § 146.137 set forth rules to ensure parity in aggregate lifetime and annual dollar limits, financial requirements, and quantitative and nonquantitative treatment limitations between mental health and substance use disorder benefits and medical/surgical benefits, as required under PHS Act section 2726. A fundamental purpose of PHS Act section 2726, this section, and § 146.137 is to ensure that participants and beneficiaries in a group health plan (or health insurance coverage offered by an issuer in connection with a group health plan) that offers mental health or substance use disorder benefits are not subject to more restrictive lifetime or annual dollar limits, financial requirements, or treatment limitations with respect to those benefits than the predominant dollar limits, financial requirements, or treatment limitations that are applied to substantially all medical/surgical benefits covered by the plan or coverage, as further provided in this section and § 146.137. Accordingly, in complying with the provisions of PHS Act section 2726, this section, and § 146.137, plans and issuers must not design or apply financial requirements and treatment limitations that impose a greater burden on access (that is, are more restrictive) to mental health and substance use disorder benefits under the plan or coverage than they impose on access to generally comparable medical/surgical benefits. The provisions of PHS section 2726, this section, and § 146.137 should be interpreted in a manner that is consistent with the purpose described in this paragraph (a)(1).

(2) *Meaning of terms.* For purposes of this section and § 146.137, except where the context clearly indicates otherwise, the following terms have the meanings indicated:

* * * * *

DSM means the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. For the purpose of this definition, the most current version of the DSM is the version that is applicable no earlier than on the date that is 1 year before the first day of the applicable plan year.

Evidentiary standards are any evidence, sources, or standards that a group health plan (or health insurance issuer offering coverage in connection with such a plan) considered or relied upon in designing or applying a factor with respect to a nonquantitative treatment limitation, including specific benchmarks or thresholds. Evidentiary standards may be empirical, statistical, or clinical in nature, and include: sources acquired or originating from an objective third party, such as recognized medical literature, professional standards and protocols (which may include comparative effectiveness studies and clinical trials), published research studies, payment rates for items and services (such as publicly available databases of the ''usual, customary and reasonable'' rates paid for items and services), and clinical treatment guidelines; internal plan or issuer data, such as claims or utilization data or criteria for assuring a sufficient mix and number of network providers; and benchmarks or thresholds, such as measures of excessive utilization, cost levels, time or distance standards, or network participation percentage thresholds.

Factors are all information, including processes and strategies (but not evidentiary standards), that a group health plan (or health insurance issuer offering coverage in connection with such a plan) considered or relied upon to design a nonquantitative treatment limitation, or to determine whether or how the nonquantitative treatment limitation applies to benefits under the plan or coverage. Examples of factors include, but are not limited to: provider discretion in determining a diagnosis or type or length of treatment; clinical efficacy of any proposed treatment or service; licensing and accreditation of providers; claim types with a high percentage of fraud; quality measures; treatment outcomes; severity or chronicity of condition; variability in the cost of an episode of treatment; high cost growth; variability in cost and quality; elasticity of demand; and geographic location.

* * * * *

ICD means the World Health Organization's International Classification of Diseases adopted by the Department of Health and Human Services through § 162.1002 of this subtitle. For the purpose of this definition, the most current version of the ICD is the version that is applicable no earlier than on the date that is 1 year before the first day of the applicable plan year.

Medical/surgical benefits means benefits with respect to items or services for medical conditions or surgical procedures, as defined under the terms of the group health plan (or health insurance coverage offered by an issuer in connection with such a plan) and in accordance with applicable Federal and State law, but does not include mental health benefits or substance use disorder benefits. Notwithstanding the preceding sentence, any condition or procedure defined by the plan or coverage as being or as not being a medical condition or surgical procedure must be defined consistent with generally recognized independent standards of current medical practice (for example, the most current version of the ICD). To the extent generally recognized independent standards of current medical practice do not address whether a condition or procedure is a medical condition or surgical procedure, plans and issuers may define the condition or procedure in accordance with applicable Federal and State law.

Mental health benefits means benefits with respect to items or services for mental health conditions, as defined under the terms of the group health plan (or health insurance coverage offered by an issuer in connection with such a plan) and in accordance with applicable Federal and State law, but does not include medical/surgical benefits or substance use disorder benefits. Notwithstanding the preceding sentence, any condition defined by the plan or coverage as being or as not being a mental health condition must be defined consistent with generally recognized independent standards of current medical practice. For the purpose of this definition, to be consistent with generally recognized independent standards of current medical practice, the definition must include all conditions covered under the plan or coverage, except for substance use disorders, that fall under any of the diagnostic categories listed in the mental, behavioral, and neurodevelopmental disorders chapter (or equivalent chapter) of the most current version of the ICD or that are listed in the most current version of the DSM. To the extent generally recognized independent standards of current medical practice do not address whether a condition is a mental health condition, plans and issuers may define the condition in accordance with applicable Federal and State law.

Processes are actions, steps, or procedures that a group health plan (or health insurance issuer offering coverage in connection with such a plan) uses to apply a nonquantitative treatment limitation, including actions, steps, or procedures established by the

plan or issuer as requirements in order for a participant or beneficiary to access benefits, including through actions by a participant's or beneficiary's authorized representative or a provider or facility. Processes include but are not limited to: procedures to submit information to authorize coverage for an item or service prior to receiving the benefit or while treatment is ongoing (including requirements for peer or expert clinical review of that information); provider referral requirements; and the development and approval of a treatment plan. Processes also include the specific procedures used by staff or other representatives of a plan or issuer (or the service provider of a plan or issuer) to administer the application of nonquantitative treatment limitations, such as how a panel of staff members applies the nonquantitative treatment limitation (including the qualifications of staff involved, number of staff members allocated, and time allocated), consultations with panels of experts in applying the nonquantitative treatment limitation, and reviewer discretion in adhering to criteria hierarchy when applying a nonquantitative treatment limitation.

Strategies are practices, methods, or internal metrics that a plan (or health insurance issuer offering coverage in connection with such a plan) considers, reviews, or uses to design a nonquantitative treatment limitation. Examples of strategies include but are not limited to: the development of the clinical rationale used in approving or denying benefits; deviation from generally accepted standards of care; the selection of information deemed reasonably necessary to make a medical necessity determination; reliance on treatment guidelines or guidelines provided by third-party organizations; and rationales used in selecting and adopting certain threshold amounts, professional protocols, and fee schedules. Strategies also include the creation and composition of the staff or other representatives of a plan or issuer (or the service provider of a plan or issuer) that deliberates, or otherwise makes decisions, on the design of nonquantitative treatment limitations, including the plan's decisions related to the qualifications of staff involved, number of staff members allocated, and time allocated; breadth of sources and evidence considered; consultations with panels of experts in designing the nonquantitative treatment limitation; and the composition of the panels used to design a nonquantitative treatment limitation.

Substance use disorder benefits means benefits with respect to items or services for substance use disorders, as defined under the terms of the group health plan (or health insurance coverage offered by an issuer in connection with such a plan) and in accordance with applicable Federal and State law, but does not include medical/surgical benefits or mental health benefits. Notwithstanding the preceding sentence, any disorder defined by the plan or coverage as being or as not being a substance use disorder must be defined consistent with generally recognized independent standards of current medical practice. For the purpose of this definition, to be consistent with generally recognized independent standards of current medical practice, the definition must include all disorders covered under the plan or coverage that fall under any of the diagnostic categories listed as a mental or behavioral disorder due to psychoactive substance use (or equivalent category) in the mental, behavioral and neurodevelopmental disorders chapter (or equivalent chapter) of the most current version of the ICD or that are listed as a Substance-Related and Addictive Disorder (or equivalent category) in the most current version of the DSM. To the extent generally recognized independent standards of current medical practice do not address whether a disorder is a substance use disorder, plans and issuers may define the disorder in accordance with applicable Federal and State law.

Treatment limitations include limits on benefits based on the frequency of treatment, number of visits, days of coverage, days in a waiting period, or other similar limits on the scope or duration of treatment. Treatment limitations include both quantitative treatment limitations, which are expressed numerically (such as 50 outpatient visits per year), and nonquantitative treatment limitations, which otherwise limit the scope or duration of benefits for treatment under a plan or coverage. (See paragraph (c)(4)(iii) of this section for an illustrative, non-exhaustive list of nonquantitative treatment limitations.) A complete exclusion of all benefits for a particular condition or disorder, however, is not a treatment limitation for purposes of this definition.

* * * * *

(c) * * *

(1) * * *

(ii) *Type of financial requirement or treatment limitation.* When reference is made in this paragraph (c) to a type of financial requirement or treatment limitation, the reference to type means its nature. Different types of financial requirements include deductibles, copayments, coinsurance, and out-of-pocket maximums. Different types of quantitative treatment limitations include annual, episode, and lifetime day and visit limits. See paragraph (c)(4)(iii) of this section for an illustrative, non-exhaustive list of nonquantitative treatment limitations.

* * * * *

(2) * * *

(i) *General rule.* A group health plan (or health insurance coverage offered by an issuer in connection with a group health plan) that provides both medical/surgical benefits and mental health or substance use disorder benefits may not apply any financial requirement or treatment limitation to mental health or substance use disorder benefits in any classification that is more restrictive than the predominant financial requirement or treatment limitation of that type applied to substantially all medical/surgical benefits in the same classification. Whether a financial requirement or treatment limitation is a predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in a classification is determined separately for each type of financial requirement or treatment limitation. A plan or issuer may not impose any financial requirement or treatment limitation that is applicable only with respect to mental health or substance use disorder benefits and not to any medical/surgical benefits in the same benefit classification. The application of the rules of this paragraph (c)(2) to financial requirements and quantitative treatment limitations is addressed in paragraph (c)(3) of this section; the application of the rules of this paragraph (c)(2) to nonquantitative treatment limitations is addressed in paragraph (c)(4) of this section.

(ii) * * *

(A) *In general.* If a plan (or health insurance coverage) provides any benefits for a mental health condition or substance use disorder in any classification of benefits described in this paragraph (c)(2)(ii), benefits for that mental health condition or substance use disorder must be provided in every classification in which medical/surgical benefits are provided. For purposes of this paragraph (c)(2)(ii), a plan (or health insurance coverage) providing any benefits for a mental health condition or substance use disorder in any classification of benefits does not provide benefits for the mental health condition or substance use disorder in every classification in which medical/

surgical benefits are provided unless the plan (or health insurance coverage) provides meaningful benefits for treatment for that condition or disorder in each such classification, as determined in comparison to the benefits provided for medical/surgical conditions in the classification. In determining the classification in which a particular benefit belongs, a plan (or health insurance issuer) must apply the same standards to medical/surgical benefits and to mental health or substance use disorder benefits. To the extent that a plan (or health insurance coverage) provides benefits in a classification and imposes any separate financial requirement or treatment limitation (or separate level of a financial requirement or treatment limitation) for benefits in the classification, the rules of this paragraph (c) apply separately with respect to that classification for all financial requirements or treatment limitations (illustrated in examples in paragraph (c)(2)(ii)(C) of this section). The following classifications of benefits are the only classifications used in applying the rules of this paragraph (c), in addition to the permissible sub-classifications described in paragraph (c)(3)(iii) of this section:

* * * * *

(C) * * *

(*1*) *Example 1*—(*i*) *Facts.* A group health plan offers inpatient and outpatient benefits and does not contract with a network of providers. The plan imposes a $500 deductible on all benefits. For inpatient medical/surgical benefits, the plan imposes a coinsurance requirement. For outpatient medical/surgical benefits, the plan imposes copayments. The plan imposes no other financial requirements or treatment limitations.

(*ii*) *Conclusion.* In this paragraph (c)(2)(ii)(C)(*1*) (*Example 1*), because the plan has no network of providers, all benefits provided are out-of-network. Because inpatient, out-of-network medical/surgical benefits are subject to separate financial requirements from outpatient, out-of-network medical/surgical benefits, the rules of this paragraph (c) apply separately with respect to any financial requirements and treatment limitations, including the deductible, in each classification.

(*2*) *Example 2*—(*i*) *Facts.* A plan imposes a $500 deductible on all benefits. The plan has no network of providers. The plan generally imposes a 20 percent coinsurance requirement with respect to all benefits, without distinguishing among inpatient, outpatient, emergency care, or prescription drug benefits. The plan imposes no other financial requirements or treatment limitations.

(*ii*) *Conclusion.* In this paragraph (c)(2)(ii)(C)(*2*) (*Example 2*), because the plan does not impose separate financial requirements (or treatment limitations) based on classification, the rules of this paragraph (c) apply with respect to the deductible and the coinsurance across all benefits.

(*3*) *Example 3*—(*i*) *Facts.* Same facts as in paragraph (c)(2)(ii)(C)(*2*)(*i*) of this section (*Example 2*), except the plan exempts emergency care benefits from the 20 percent coinsurance requirement. The plan imposes no other financial requirements or treatment limitations.

(*ii*) *Conclusion.* In this paragraph (c)(2)(ii)(C)(*3*) (*Example 3*), because the plan imposes separate financial requirements based on classifications, the rules of this paragraph (c) apply with respect to the deductible and the coinsurance separately for benefits in the emergency care classification and all other benefits.

(*4*) *Example 4*—(*i*) *Facts.* Same facts as in paragraph (c)(2)(ii)(C)(*2*)(*i*) of this section (*Example 2*), except the plan also imposes a preauthorization requirement for all inpatient treatment in order for benefits to be paid. No such requirement applies to outpatient treatment.

(*ii*) *Conclusion.* In this paragraph (c)(2)(ii)(C)(*4*) (*Example 4*), because the plan has no network of providers, all benefits provided are out-of-network. Because the plan imposes a separate treatment limitation based on classifications, the rules of this paragraph (c) apply with respect to the deductible and coinsurance separately for inpatient, out-of-network benefits and all other benefits.

(*5*) *Example 5*—(*i*) *Facts.* A plan generally covers treatment for autism spectrum disorder (ASD), a mental health condition, and covers outpatient, out-of-network developmental evaluations for ASD but excludes all other benefits for outpatient treatment for ASD, including applied behavioral analysis (ABA) therapy, when provided on an out-of-network basis. The plan generally covers the full range of outpatient treatments and treatment settings for medical conditions and surgical procedures when provided on an out-of-network basis.

(*ii*) *Conclusion.* In this paragraph (c)(2)(ii)(C)(*5*) (*Example 5*), the plan violates the rules of this paragraph (c)(2)(ii). Because the plan only covers one type of benefit for ASD in the outpatient, out-of-network classification and excludes all other benefits for ASD in the classification, but generally covers the full range of medical/surgical benefits in the classification, it fails to provide meaningful benefits for treatment of ASD in the classification.

(*6*) *Example 6*—(*i*) *Facts.* A plan generally covers diagnosis and treatment for eating disorders, a mental health condition, but specifically excludes coverage for nutrition counseling to treat eating disorders, including in the outpatient, in-network classification. Nutrition counseling is one of the primary treatments for eating disorders. The plan generally provides benefits for the primary treatments for medical/surgical conditions in the outpatient, in-network classification.

(*ii*) *Conclusion.* In this paragraph (c)(2)(ii)(C)(*6*) (*Example 6*), the plan violates the rules of this paragraph (c)(2)(ii). The exclusion of coverage for nutrition counseling for eating disorders results in the plan failing to provide meaningful benefits for the treatment of eating disorders in the outpatient, in-network classification, as determined in comparison to the benefits provided for medical/surgical conditions in the classification.

(3) * * *

(i) * * *

(A) *Substantially all.* For purposes of this paragraph (c)(3), a type of financial requirement or quantitative treatment limitation is considered to apply to substantially all medical/surgical benefits in a classification of benefits if it applies to at least two-thirds of all medical/surgical benefits in that classification. (For purposes of this paragraph (c)(3)(i)(A), benefits expressed as subject to a zero level of a type of financial requirement are treated as benefits not subject to that type of financial requirement, and benefits expressed as subject to a quantitative treatment limitation that is unlimited are treated as benefits not subject to that type of quantitative treatment limitation.) If a type of financial requirement or quantitative treatment limitation does not apply to at least two-thirds of all medical/surgical benefits in a classification, then that type cannot be applied to mental health or substance use disorder benefits in that classification.

* * * * *

(C) *Portion based on plan payments.* For purposes of this paragraph (c)(3), the determination of the portion of medical/surgical benefits in a classification of benefits subject to a financial requirement or quantitative treatment limitation (or subject to any level of a financial requirement or quantitative treatment limitation) is based on the dollar amount of all plan

payments for medical/surgical benefits in the classification expected to be paid under the plan for the plan year (or for the portion of the plan year after a change in plan benefits that affects the applicability of the financial requirement or quantitative treatment limitation).

(D) *Clarifications for certain threshold requirements.* For any deductible, the dollar amount of plan payments includes all plan payments with respect to claims that would be subject to the deductible if it had not been satisfied. For any out-of-pocket maximum, the dollar amount of plan payments includes all plan payments associated with out-of-pocket payments that are taken into account towards the out-of-pocket maximum as well as all plan payments associated with out-of-pocket payments that would have been made towards the out-of-pocket maximum if it had not been satisfied. Similar rules apply for any other thresholds at which the rate of plan payment changes. (See also PHS Act section 2707 and Affordable Care Act section 1302(c), which establish annual limitations on out-of-pocket maximums for all non-grandfathered health plans.)

* * * * *

(iii) *Special rules.* Unless specifically permitted under this paragraph (c)(3)(iii), sub-classifications are not permitted when applying the rules of paragraph (c)(3) of this section.

(A) *Multi-tiered prescription drug benefits.* If a plan (or health insurance coverage) applies different levels of financial requirements to different tiers of prescription drug benefits based on reasonable factors determined in accordance with the rules in paragraph (c)(4) of this section (relating to requirements for nonquantitative treatment limitations) and without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits, the plan (or health insurance coverage) satisfies the parity requirements of this paragraph (c) with respect to prescription drug benefits. Reasonable factors include cost, efficacy, generic versus brand name, and mail order versus pharmacy pick-up.

(B) *Multiple network tiers.* If a plan (or health insurance coverage) provides benefits through multiple tiers of in-network providers (such as an in-network tier of preferred providers with more generous cost-sharing to participants than a separate in-network tier of participating providers), the plan may divide its benefits furnished on an in-network basis into sub-classifications that reflect network tiers, if the tiering is based on reasonable factors determined in accordance with the rules in paragraph (c)(4) of this section (such as quality, performance, and market standards) and without regard to whether a provider provides services with respect to medical/surgical benefits or mental health or substance use disorder benefits. After the sub-classifications are established, the plan or issuer may not impose any financial requirement or treatment limitation on mental health or substance use disorder benefits in any sub-classification that is more restrictive than the predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in the sub-classification using the methodology set forth in paragraph (c)(3)(i) of this section.

* * * * *

(iv) *Examples.* The rules of paragraphs (c)(3)(i) through (iii) of this section are illustrated by the following examples. In each example, the group health plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits.

(A) *Example 1*—(*1*) *Facts.* (*i*) For inpatient, out-of-network medical/surgical benefits, a group health plan imposes five levels of coinsurance. Using a reasonable method, the plan projects its payments for the upcoming year as follows:

TABLE 1 TO PARAGRAPH (c)(3)(iv)(A)(*1*)(*i*)

Coinsurance rate	0%	10%	15%	20%	30%	Total
Projected payments	$200x	$100x	$450x	$100x	$150x	$1,000x
Percent of total plan costs	20	10	45	10	15	
Percent subject to coinsurance level	N/A	12.5 (100x/800x)	56.25 (450x/800x)	12.5 (100x/800x)	18.75 (150x/800x)	

(*ii*) The plan projects plan costs of $800x to be subject to coinsurance ($100x + $450x + $100x + $150x = $800x). Thus, 80 percent ($800x/$1,000x) of the benefits are projected to be subject to coinsurance, and 56.25 percent of the benefits subject to coinsurance are projected to be subject to the 15 percent coinsurance level.

(*2*) *Conclusion.* In this paragraph (c)(3)(iv)(A) (*Example 1*), the two-thirds threshold of the substantially all standard is met for coinsurance because 80 percent of all inpatient, out-of-network medical/surgical benefits are subject to coinsurance. Moreover, the 15 percent coinsurance is the predominant level because it is applicable to more than one-half of inpatient, out-of-network medical/surgical benefits subject to the coinsurance requirement. The plan may not impose any level of coinsurance with respect to inpatient, out-of-network mental health or substance use disorder benefits that is more restrictive than the 15 percent level of coinsurance.

(B) *Example 2*—(*1*) *Facts.* (*i*) For outpatient, in-network medical/surgical benefits, a plan imposes five different copayment levels. Using a reasonable method, the plan projects payments for the upcoming year as follows:

TABLE 2 TO PARAGRAPH (c)(3)(iv)(B)(*1*)(*i*)

Copayment amount	$0	$10	$15	$20	$50	Total
Projected payments	$200x	$200x	$200x	$300x	$100x	$1,000x
Percent of total plan costs	20	20	20	30	10	
Percent subject to copayments	N/A	25 (200x/800x)	25 (200x/800x)	37.5 (300x/800x)	12.5 (100x/800x)	

(*ii*) The plan projects plan costs of $800x to be subject to copayments ($200x + $200x + $300x + $100x = $800x). Thus, 80 percent ($800x/$1,000x) of the benefits are projected to be subject to a copayment.

(*2*) *Conclusion.* In this paragraph (c)(3)(iv)(B) (*Example 2*), the two-thirds threshold of the substantially all standard is met for copayments because 80 percent of all outpatient, in-network medical/surgical benefits are subject to a copayment. Moreover, there is no single level that applies to more than one-half of medical/surgical benefits in the classification subject to a copayment (for the $10 copayment, 25%; for the $15 copayment, 25%; for the $20 copayment, 37.5%; and for the $50 copayment, 12.5%). The plan can combine any levels of copayment, including the highest levels, to determine the predominant level that can be applied to mental health or substance use disorder benefits. If the plan combines the highest levels of copayment, the combined projected payments for the two highest copayment levels, the $50 copayment and the $20 copayment, are not more than one-half of the outpatient, in-network medical/surgical benefits subject to a copayment because they are exactly one-half ($300x + $100x = $400x; $400x/$800x = 50%). The combined projected payments for the three highest copayment levels—the $50 copayment, the $20 copayment, and the $15 copayment—are more than one-half of the outpatient, in-network medical/surgical benefits subject to the copayments ($100x + $300x + $200x = $600x; $600x/$800x = 75%). Thus, the plan may not impose any copayment on outpatient, in-network mental health or substance use disorder benefits that is more restrictive than the least restrictive copayment in the combination, the $15 copayment.

(C) *Example 3*—(*1*) *Facts.* A plan imposes a $250 deductible on all medical/surgical benefits for self-only coverage and a $500 deductible on all medical/surgical benefits for family coverage. The plan has no network of providers. For all medical/surgical benefits, the plan imposes a coinsurance requirement. The plan imposes no other financial requirements or treatment limitations.

(*2*) *Conclusion.* In this paragraph (c)(3)(iv)(C) (*Example 3*), because the plan has no network of providers, all benefits are provided out-of-network. Because self-only and family coverage are subject to different deductibles, whether the deductible applies to substantially all medical/surgical benefits is determined separately for self-only medical/surgical benefits and family medical/surgical benefits. Because the coinsurance is applied without regard to coverage units, the predominant coinsurance that applies to substantially all medical/surgical benefits is determined without regard to coverage units.

(D) *Example 4*—(*1*) *Facts.* A plan applies the following financial requirements for prescription drug benefits. The requirements are applied without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits. Moreover, the process for certifying a particular drug as ''generic'', ''preferred brand name'', ''non-preferred brand name'', or ''specialty'' complies with the rules of paragraph (c)(4) of this section (relating to requirements for nonquantitative treatment limitations).

TABLE 3 TO PARAGRAPH (c)(3)(iv)(D)(*1*)

	Tier 1	Tier 2	Tier 3	Tier 4
Tier description	Generic drugs	Preferred brand name drugs.	Non-preferred brand name drugs (which may have Tier 1 or Tier 2 alternatives).	Specialty drugs.
Percent paid by plan	90%	80%	60%	50%.

(*2*) *Conclusion.* In this paragraph (c)(3)(iv)(D) (*Example 4*), the financial requirements that apply to prescription drug benefits are applied without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits; the process for certifying drugs in different tiers complies with paragraph (c)(4) of this section; and the bases for establishing different levels or types of financial requirements are reasonable. The financial requirements applied to prescription drug benefits do not violate the parity requirements of this paragraph (c)(3).

(E) *Example 5*—(*1*) *Facts.* A plan has two-tiers of network of providers: a preferred provider tier and a participating provider tier. Providers are placed in either the preferred tier or participating tier based on reasonable factors determined in accordance with the rules in paragraph (c)(4) of this section, such as accreditation, quality and performance measures (including customer feedback), and relative reimbursement rates. Furthermore, provider tier placement is determined without regard to whether a provider specializes in the treatment of mental health conditions or substance use disorders, or medical/surgical conditions. The plan divides the in-network classifications into two sub-classifications (in-network/preferred and in-network/participating). The plan does not impose any financial requirement or treatment limitation on mental health or substance use disorder benefits in either of these sub-classifications that is more restrictive than the predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in each sub-classification.

(*2*) *Conclusion.* In this paragraph (c)(3)(iv)(E) (*Example 5*), the division of in-network benefits into sub-classifications that reflect the preferred and participating provider tiers does not violate the parity requirements of this paragraph (c)(3).

(F) *Example 6*—(*1*) *Facts.* With respect to outpatient, in-network benefits, a plan imposes a $25 copayment for office visits and a 20 percent coinsurance requirement for outpatient surgery. The plan divides the outpatient, in-network classification into two sub-classifications (in-network office visits and all other outpatient, in-network items and services). The plan or issuer does not impose any financial requirement or quantitative treatment limitation on mental health or substance use disorder benefits in either of these sub-classifications that is more restrictive than the predominant financial requirement or quantitative treatment limitation that applies to substantially all medical/surgical benefits in each sub-classification.

(*2*) *Conclusion.* In this paragraph (c)(3)(iv)(F) (*Example 6*), the division of outpatient, in-network benefits into sub-

classifications for office visits and all other outpatient, in-network items and services does not violate the parity requirements of this paragraph (c)(3).

(G) *Example 7*—(*1*) *Facts.* Same facts as in paragraph (c)(3)(iv)(F)(*1*) of this section (*Example 6*), but for purposes of determining parity, the plan divides the outpatient, in-network classification into outpatient, in-network generalists and outpatient, in-network specialists.

(*2*) *Conclusion.* In this paragraph (c)(3)(iv)(G) (*Example 7*), the division of outpatient, in-network benefits into any sub-classifications other than office visits and all other outpatient items and services violates the requirements of paragraph (c)(3)(iii)(C) of this section.

* * * * *

(4) *Nonquantitative treatment limitations.* Subject to paragraph (c)(4)(v) of this section, a group health plan (or health insurance coverage offered by an issuer in connection with a group health plan) may not impose a nonquantitative treatment limitation with respect to mental health or substance use disorder benefits in a classification unless the plan's or coverage's imposition of the limitation meets the requirements of paragraphs (c)(4)(i), (ii), and (iv) of this section. If a group health plan (or health insurance coverage offered by an issuer in connection with a group health plan) fails to meet any of these requirements with respect to a nonquantitative treatment limitation, the limitation violates section 2726(a)(3)(A)(ii) of the PHS Act and may not be imposed by the plan (or health insurance coverage).

(i) *Requirement that nonquantitative treatment limitations be no more restrictive for mental health benefits and substance use disorder benefits.* A group health plan (or health insurance issuer offering coverage in connection with a group health plan) may not apply any nonquantitative treatment limitation with respect to mental health or substance use disorder benefits in any classification that is more restrictive, as written or in operation, than the predominant nonquantitative treatment limitation applied to substantially all medical/surgical benefits in the same classification.

(A) *Restrictive.* For purposes of this paragraph (c)(4)(i), a nonquantitative treatment limitation is restrictive to the extent it imposes conditions, terms, or requirements that limit access to benefits under the terms of the plan or coverage. Conditions, terms, or requirements include, but are not limited to, those that compel an action by or on behalf of a participant or beneficiary to access benefits or limit access to the full range of treatment options available for a condition or disorder under the plan or coverage.

(B) *Substantially all.* For purposes of this paragraph (c)(4)(i), a nonquantitative treatment limitation is considered to apply to substantially all medical/surgical benefits in a classification if it applies to at least two-thirds of all medical/surgical benefits in that classification, consistent with paragraph (c)(4)(i)(D) of this section. Whether the nonquantitative treatment limitation applies to at least two-thirds of all medical/surgical benefits is determined without regard to whether the nonquantitative treatment limitation was triggered based on a particular factor or evidentiary standard. If a nonquantitative treatment limitation does not apply to at least two-thirds of all medical/surgical benefits in a classification, then that limitation cannot be applied to mental health or substance use disorder benefits in that classification.

(C) *Predominant.* For purposes of this paragraph (c)(4)(i), the term predominant means the most common or most frequent variation of the nonquantitative treatment limitation within a classification, determined in accordance with the method outlined in paragraph (c)(4)(i)(D) of this section, to the extent the plan or issuer imposes multiple variations of a nonquantitative treatment limitation within the classification. For example, multiple variations of inpatient concurrent review include review commencing 1 day, 3 days, or 7 days after admission, depending on the reason for the stay.

(D) *Portion based on plan payments.* For purposes of paragraphs (c)(4)(i)(B) and (C) of this section, the determination of the portion of medical/surgical benefits in a classification of benefits subject to a nonquantitative treatment limitation is based on the dollar amount of all plan payments for medical/surgical benefits in the classification expected to be paid under the plan or coverage for the plan year (or the portion of the plan year after a change in benefits that affects the applicability of the nonquantitative treatment limitation). Any reasonable method may be used to determine the dollar amount expected to be paid under a plan or coverage for medical/surgical benefits.

(E) *Exceptions for independent professional medical or clinical standards and standards to detect or prevent and prove fraud, waste, and abuse.* Notwithstanding paragraphs (c)(4)(i)(A) through (D) of this section, a plan or issuer that applies a nonquantitative treatment limitation that impartially applies independent professional medical or clinical standards or applies standards to detect or prevent and prove fraud, waste, and abuse, as described in paragraph (c)(4)(v)(A) or (B) of this section, to mental health or substance use disorder benefits in any classification will not be considered to violate this paragraph (c)(4)(i) with respect to such nonquantitative treatment limitation.

(ii) *Additional requirements related to design and application of the nonquantitative treatment limitation*—(A) *In general.* Consistent with paragraph (a)(1) of this section, a plan or issuer may not impose a nonquantitative treatment limitation with respect to mental health or substance use disorder benefits in any classification unless, under the terms of the plan (or health insurance coverage) as written and in operation, any processes, strategies, evidentiary standards, or other factors used in designing and applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in designing and applying the limitation with respect to medical/surgical benefits in the classification.

(B) *Prohibition on discriminatory factors and evidentiary standards.* For purposes of determining comparability and stringency under paragraph (c)(4)(ii)(A) of this section, a plan or issuer may not rely upon any factor or evidentiary standard if the information, evidence, sources, or standards on which the factor or evidentiary standard is based discriminates against mental health or substance use disorder benefits as compared to medical/surgical benefits. For purposes of this paragraph (c)(4)(ii)(B):

(*1*) Impartially applied generally recognized independent professional medical or clinical standards described in paragraph (c)(4)(v)(A) of this section are not considered to discriminate against mental health or substance use disorder benefits.

(*2*) Standards reasonably designed to detect or prevent and prove fraud, waste, and abuse described in paragraph (c)(4)(v)(B) of this section are not considered to discriminate against mental health or substance use disorder benefits.

(*3*) Information is considered to discriminate against mental health or substance use disorder benefits if it is biased or not objective, in a manner that results in less favorable treatment of

mental health or substance use disorder benefits, based on all the relevant facts and circumstances including, but not limited to, the source of the information, the purpose or context of the information, and the content of the information.

(iii) *Illustrative, non-exhaustive list of nonquantitative treatment limitations.* Nonquantitative treatment limitations include—

(A) Medical management standards (such as prior authorization) limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative;

(B) Formulary design for prescription drugs;

(C) For plans with multiple network tiers (such as preferred providers and participating providers), network tier design;

(D) Standards related to network composition, including but not limited to, standards for provider and facility admission to participate in a network or for continued network participation, including methods for determining reimbursement rates, credentialing standards, and procedures for ensuring the network includes an adequate number of each category of provider and facility to provide services under the plan or coverage;

(E) Plan or issuer methods for determining out-of-network rates, such as allowed amounts; usual, customary, and reasonable charges; or application of other external benchmarks for out-of-network rates;

(F) Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols);

(G) Exclusions based on failure to complete a course of treatment; and

(H) Restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the plan or coverage.

(iv) *Required use of outcomes data*—(A) *In general.* When designing and applying a nonquantitative treatment limitation, a plan or issuer must collect and evaluate relevant data in a manner reasonably designed to assess the impact of the nonquantitative treatment limitation on access to mental health and substance use disorder benefits and medical/surgical benefits, and consider the impact as part of the plan's or issuer's analysis of whether the limitation, in operation, complies with paragraphs (c)(4)(i) and (ii) of this section. The Secretary, jointly with the Secretary of the Treasury and the Secretary of Labor, may specify in guidance the type, form, and manner of collection and evaluation for the data required under this paragraph (c)(4)(iv)(A).

(*1*) For purposes of this paragraph (c)(4)(iv)(A), relevant data includes, but is not limited to, the number and percentage of claims denials and any other data relevant to the nonquantitative treatment limitation required by State law or private accreditation standards.

(*2*) In addition to the relevant data set forth in paragraph (c)(4)(iv)(A)(*1*) of this section, relevant data for nonquantitative treatment limitations related to network composition standards includes, but is not limited to, in-network and out-of-network utilization rates (including data related to provider claim submissions), network adequacy metrics (including time and distance data, and data on providers accepting new patients), and provider reimbursement rates (including as compared to billed charges).

(B) *Material differences.* Subject to paragraph (c)(4)(iv)(C) of this section, to the extent the relevant data evaluated pursuant to paragraph (c)(4)(iv)(A) of this section show material differences in access to mental health and substance use disorder benefits as compared to medical/surgical benefits, the differences will be considered a strong indicator that the plan or issuer violates paragraph (c)(4)(i) or (ii) of this section. In such instances, the plan or issuer:

(*1*) Must take reasonable action to address the material differences in access as necessary to ensure compliance, in operation, with paragraphs (c)(4)(i) and (ii) of this section; and

(*2*) Must document the action that has been or is being taken by the plan or issuer to mitigate any material differences in access to mental health and substance use disorder benefits as compared to medical/surgical benefits, as required by § 146.137(c)(5)(iv).

(C) *Special rule for nonquantitative treatment limitations related to network composition.* Notwithstanding paragraph (c)(4)(iv)(B) of this section, when designing and applying one or more nonquantitative treatment limitation(s) related to network composition standards, a plan or issuer fails to meet the requirements of paragraphs (c)(4)(i) and (ii) of this section, in operation, if the relevant data show material differences in access to in-network mental health and substance use disorder benefits as compared to in-network medical/surgical benefits in a classification.

(D) *Exception for independent professional medical or clinical standards.* A plan or issuer designing and applying a nonquantitative treatment limitation with respect to mental health or substance use disorder benefits in any classification that impartially applies independent professional medical or clinical standards, as described in paragraph (c)(4)(v)(A) of this section, is not required to comply with the requirements of this paragraph (c)(4)(iv) with respect to that classification.

(v) *Independent professional medical or clinical standards and standards to detect or prevent and prove fraud, waste, and abuse.* (A) To qualify for the exceptions in paragraphs (c)(4)(i)(E), (c)(4)(ii)(B), and (c)(4)(iv)(D) of this section for independent professional medical or clinical standards, a nonquantitative treatment limitation must impartially apply generally recognized independent professional medical or clinical standards (consistent with generally accepted standards of care) to medical/surgical benefits and mental health or substance use disorder benefits, and may not deviate from those standards in any way, such as by imposing additional or different requirements.

(B) To qualify for the exceptions in paragraphs (c)(4)(i)(E) and (c)(4)(ii)(B) of this section to detect or prevent and prove fraud, waste, and abuse, a nonquantitative treatment limitation must be reasonably designed to detect or prevent and prove fraud, waste, and abuse, based on indicia of fraud, waste, and abuse that have been reliably established through objective and unbiased data, and also be narrowly designed to minimize the negative impact on access to appropriate mental health and substance use disorder benefits.

(vi) *Prohibition on separate nonquantitative treatment limitations applicable only to mental health or substance use disorder benefits.* Consistent with paragraph (c)(2)(i) of this section, a group health plan (or health insurance coverage offered by an issuer in connection with such a plan) may not apply any nonquantitative treatment limitation that is applicable only with respect to mental health or substance use disorder benefits and does not apply with respect to any medical/surgical benefits in the same benefit classification.

(vii) *Effect of final determination of noncompliance under § 146.137.* If a group health plan (or health insurance issuer offering group health insurance coverage in connection with such a plan) receives a final determination

from the Secretary that the plan or issuer is not in compliance with the requirements of § 146.137 with respect to a nonquantitative treatment limitation, the nonquantitative treatment limitation violates this paragraph (c)(4) and the Secretary may direct the plan or issuer not to impose the nonquantitative treatment limitation, unless and until the plan or issuer demonstrates to the Secretary compliance with the requirements of this section or takes appropriate action to remedy the violation.

(viii) *Examples.* The rules of this paragraph (c)(4) are illustrated by the following examples. In each example, the group health plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits. Additionally, in examples that conclude that the plan or issuer violates one provision of this paragraph (c)(4), such examples do not necessarily imply compliance with other provisions of this paragraph (c)(4), as these examples do not analyze compliance with all other provisions of this paragraph (c)(4).

(A) *Example 1 (More restrictive prior authorization requirement in operation)*—(*1*) *Facts.* A plan requires prior authorization from the plan's utilization reviewer that a treatment is medically necessary for all inpatient, in-network medical/surgical benefits and for all inpatient, in-network mental health and substance use disorder benefits. While inpatient, in-network benefits for medical/surgical conditions are approved for periods of 1, 3, and 7 days, after which a treatment plan must be submitted by the patient's attending provider and approved by the plan, the approvals for 7 days are most common under this plan. For inpatient, in-network mental health and substance use disorder benefits, routine approval is most commonly given only for one day, after which a treatment plan must be submitted by the patient's attending provider and approved by the plan. The difference in the duration of approvals is not the result of independent professional medical or clinical standards or standards to detect or prevent and prove fraud, waste, and abuse, but rather reflects the application of a heightened standard to the provision of the mental health and substance use disorder benefits in the relevant classification.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(A) (*Example 1*), the plan violates the rules of paragraph (c)(4)(i) of this section. Under the terms of the plan, prior authorization applies to at least two-thirds of all medical/surgical benefits in the relevant classification (inpatient, in-network), since it applies to all benefits in the relevant classification. Further, the most common or frequent variation of the nonquantitative treatment limitation applied to medical/surgical benefits in the relevant classification (the predominant nonquantitative treatment limitation) is the routine approval of inpatient, in-network benefits for 7 days before the patient's attending provider must submit a treatment plan. However, the plan routinely approves inpatient, in-network benefits for mental health and substance use disorder conditions for only 1 day before the patient's attending provider must submit a treatment plan (and, in doing so, does not impartially apply independent professional medical or clinical standards or apply standards to detect or prevent and prove fraud, waste, and abuse that qualify for the exceptions in paragraph (c)(4)(i)(E) of this section). In operation, therefore, the prior authorization requirement imposed on inpatient, in-network mental health and substance use disorder benefits is more restrictive than the predominant prior authorization requirement applicable to substantially all medical/surgical benefits in the inpatient, in-network classification because the practice of approving only 1 day of inpatient benefits limits access to the full range of treatment options available for a condition or disorder under the plan or coverage as compared to the routine 7-day approval that is given for inpatient, in-network medical/surgical benefits. Because the plan violates the rules of paragraph (c)(4)(i) of this section, this example does not analyze compliance with paragraph (c)(4)(ii) or (iv) of this section.

(B) *Example 2 (More restrictive peer-to-peer concurrent review requirements in operation)*—(*1*) *Facts.* A plan follows a written process for the concurrent review of all medical/surgical benefits and mental health and substance use disorder benefits within the inpatient, in-network classification. Under the process, a first-level review is conducted in every instance in which concurrent review applies and an authorization request is approved by the first-level reviewer only if the clinical information submitted by the facility meets the plan's criteria for a continued stay. If the first-level reviewer is unable to approve the authorization request because the clinical information submitted by the facility does not meet the plan's criteria for a continued stay, it is sent to a second-level reviewer who will either approve or deny the request. While the written process only requires review by the second-level reviewer to either deny or approve the request, in operation, second-level reviewers for mental health and substance use disorder benefits conduct a peer-to-peer review with a provider (acting as the authorized representative of a participant or beneficiary) before coverage of the treatment is approved. The peer-to-peer review requirement is not the result of independent professional medical or clinical standards or standards to detect or prevent and prove fraud, waste, and abuse. The plan does not impose a peer-to-peer review, as written or in operation, as part of the second-level review for medical/surgical benefits.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(B) (*Example 2*), the plan violates the rules of paragraph (c)(4)(i) of this section. The concurrent review nonquantitative treatment limitation applies to at least two-thirds of all medical/surgical benefits within the inpatient, in-network classification because the plan follows the concurrent review process for all medical/surgical benefits. The most common or frequent variation of this nonquantitative treatment limitation (the predominant nonquantitative treatment limitation) applicable to substantially all medical/surgical benefits is that peer-to-peer review is not imposed as part of second-level review. The plan does not impartially apply independent professional medical or clinical standards or apply standards to detect or prevent and prove fraud, waste, and abuse that qualify for the exceptions in paragraph (c)(4)(i)(E) of this section. As written, the plan's concurrent review requirements are the same for medical/surgical benefits and mental health and substance use disorder benefits. However, in operation, by compelling an additional action (peer-to-peer review as part of second-level review) to access only mental health or substance use disorder benefits, the plan applies the limitation to mental health and substance use disorder benefits in a manner that is more restrictive than the predominant nonquantitative treatment limitation applied to substantially all medical/surgical benefits in the inpatient, in-network classification. Because the plan violates the rules of paragraph (c)(4)(i) of this section, this example does not analyze compliance with paragraph (c)(4)(ii) or (iv) of this section.

(C) *Example 3 (More restrictive peer-to-peer review medical necessity standard in operation; deviation from independent professional medical and clinical standards)*—(*1*) *Facts.* A plan

generally requires that all treatment be medically necessary in the inpatient, out-of-network classification. For both medical/surgical benefits and mental health and substance use disorder benefits, the written medical necessity standards are based on independent professional medical or clinical standards that do not require peer-to-peer review. In operation, the plan covers out-of-network benefits for medical/surgical or mental health inpatient treatment outside of a hospital if the physician documents medical appropriateness, but for out-of-network benefits for substance use disorder inpatient treatment outside of a hospital, the plan requires a physician to also complete peer-to-peer review.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(C) (*Example 3*), the plan violates the rules of paragraph (c)(4)(i) of this section. The medical necessity nonquantitative treatment limitation applies to at least two-thirds of all medical/surgical benefits in the inpatient, out-of-network classification. The most common or frequent variation of the nonquantitative treatment limitation (the predominant nonquantitative treatment limitation) applicable to substantially all medical/surgical benefits is the requirement that a physician document medical appropriateness without peer-to-peer review. The plan purports to impartially apply independent professional medical or clinical standards that would otherwise qualify for the exception in paragraph (c)(4)(i)(E) of this section, but deviates from those standards by imposing the additional requirement to complete peer-to-peer review for inpatient, out-of-network benefits for substance use disorder outside of a hospital. Therefore, the exception in paragraph (c)(4)(i)(E) of this section does not apply. As written, the plan provisions apply the nonquantitative treatment limitation to mental health and substance use disorder benefits in the inpatient, out-of-network classification in the same manner as for medical/surgical benefits. However, in operation, the nonquantitative treatment limitation imposed with respect to out-of-network substance use disorder benefits for treatment outside of a hospital is more restrictive than the predominant nonquantitative treatment limitation applied to substantially all medical/surgical benefits in the classification because it limits access to the full range of treatment options available for a condition or disorder under the plan or coverage as compared to medical/surgical benefits in the same classification. Because the plan violates the rules of paragraph (c)(4)(i) of this section, this example does not analyze compliance with paragraph (c)(4)(ii) or (iv) of this section.

(D) *Example 4 (Not comparable and more stringent methods for determining reimbursement rates in operation)*—(*1*) *Facts.* A plan's base reimbursement rates for outpatient, in-network providers are determined based on a variety of factors, including the providers' required training, licensure, and expertise. For purposes of this example, the plan's nonquantitative treatment limitations for determining reimbursement rates for mental health and substance use disorder benefits are not more restrictive than the predominant nonquantitative treatment limitation applied to substantially all medical/surgical benefits in the classification under paragraph (c)(4)(i) of this section. As written, for mental health, substance use disorder, and medical/surgical benefits, all reimbursement rates for physicians and non-physician practitioners for the same Current Procedural Terminology (CPT) code vary based on a combination of factors, such as the nature of the service, provider type, number of providers qualified to provide the service in a given geographic area, and market need (demand). As a result, reimbursement rates for mental health, substance use disorder, and medical/surgical benefits furnished by non-physician providers are generally less than for physician providers. In operation, the plan reduces the reimbursement rate for mental health and substance use disorder non-physician providers from that paid to mental health and substance use disorder physicians by the same percentage for every CPT code but does not apply the same reductions for non-physician medical/surgical providers.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(D) (*Example 4*), the plan violates the rules of paragraph (c)(4)(ii) of this section. Because the plan reimburses non-physician providers of mental health and substance use disorder services by reducing their reimbursement rate from the rate to physician providers by the same percentage for every CPT code but does not apply the same reductions to non-physician providers of medical/surgical services, in operation, the factors used in applying the nonquantitative treatment limitation to mental health and substance use disorder benefits are not comparable to, and are applied more stringently than, the factors used in applying the limitation with respect to medical/surgical benefits. Because the facts assume that the plan's methods for determining reimbursement rates comply with paragraph (c)(4)(i) of this section and the plan violates the rules of paragraph (c)(4)(ii) of this section, this example does not analyze compliance with paragraph (c)(4)(iv) of this section.

(E) *Example 5 (Exception for impartially applied generally recognized independent professional medical or clinical standards)*—(*1*) *Facts.* A group health plan develops a medical management requirement for all inpatient, out-of-network benefits for both medical/surgical benefits and mental health and substance use disorder benefits to ensure treatment is medically necessary. The medical management requirement impartially applies independent professional medical or clinical standards in a manner that qualifies for the exception in paragraph (c)(4)(i)(E) of this section. The plan does not rely on any other factors or evidentiary standards and the processes, strategies, evidentiary standards, and other factors used in designing and applying the medical management requirement to mental health and substance use disorder benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, and other factors used in designing and applying the requirement with respect to medical/surgical benefits. Within the inpatient, out-of-network classification, the application of the medical management requirement results in a higher percentage of denials for mental health and substance use disorder claims than medical/surgical claims, because the benefits were found to be medically necessary for a lower percentage of mental health and substance use disorder claims based on the impartial application of the independent professional medical or clinical standards by the nonquantitative treatment limitation.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(E) (*Example 5*), the plan does not violate the rules of this paragraph (c)(4). The medical management nonquantitative treatment limitation imposed on mental health and substance use disorder benefits does not violate paragraph (c)(4)(i) or (iv) of this section because it impartially applies independent professional medical or clinical standards for both medical/surgical benefits and mental health and substance use disorder benefits in a manner that qualifies for the exceptions in paragraphs (c)(4)(i)(E) and (c)(4)(iv)(D) of this section, respectively. Moreover, the nonquantitative treatment limitation does not violate paragraph (c)(4)(ii) of this section because the independent professional medical or

clinical standards are not considered to be a discriminatory factor or evidentiary standard under paragraph (c)(4)(ii)(B) of this section. Additionally, as written and in operation, the processes, strategies, evidentiary standards, and other factors used in designing and applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in the inpatient, out-of-network classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, and other factors used in applying the limitation with respect to medical/surgical benefits in the classification, regardless of the fact that the application of the nonquantitative treatment limitation resulted in higher percentages of claim denials for mental health and substance use disorder benefits as compared to medical/surgical benefits.

(F) *Example 6 (More restrictive prior authorization requirement; exception for impartially applied generally recognized independent professional medical or clinical standards not met)*—(*1*) *Facts.* The provisions of a plan state that it applies independent professional medical and clinical standards (consistent with generally accepted standards of care) for setting prior authorization requirements for both medical/surgical and mental health and substance use disorder prescription drugs. The relevant generally recognized independent professional medical standard for treatment of opioid use disorder that the plan utilizes—in this case, the American Society of Addiction Medicine national practice guidelines—does not support prior authorization every 30 days for buprenorphine/naloxone. However, in operation, the plan requires prior authorization for buprenorphine/naloxone combination at each refill (every 30 days) for treatment of opioid use disorder.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(F) (*Example 6*), the plan violates the rules of paragraph (c)(4)(i) of this section. The plan does not qualify for the exception in paragraph (c)(4)(i)(E) of this section, because, although the provisions of the plan state that it applies independent professional medical and clinical standards, the plan deviates from the relevant standards with respect to prescription drugs to treat opioid use disorder. The prior authorization nonquantitative treatment limitation is applied to at least two-thirds of all medical/surgical benefits in the prescription drugs classification. The most common or frequent variation of this nonquantitative treatment limitation (the predominant nonquantitative treatment limitation) applicable to substantially all medical/surgical benefits is following generally recognized independent professional medical and clinical standards (consistent with generally accepted standards of care). The prior authorization requirements imposed on substance use disorder benefits are more restrictive than the predominant nonquantitative treatment limitation applicable to substantially all medical/surgical benefits in the classification, because the plan imposes additional requirements on substance use disorder benefits that limit access to the full range of treatment options available for a condition or disorder under the plan or coverage as compared to medical/surgical benefits in the same classification. Because the plan violates the rules of paragraph (c)(4)(i) of this section, this example does not analyze compliance with paragraph (c)(4)(ii) or (iv) of this section.

(G) *Example 7 (Impermissible nonquantitative treatment limitation imposed following a final determination of noncompliance and direction by the Secretary)*—(*1*) *Facts.* Following an initial request by the Secretary for a plan's comparative analysis of a nonquantitative treatment limitation pursuant to § 146.137(d), the plan submits a comparative analysis for the nonquantitative treatment limitation. After review of the comparative analysis, the Secretary makes an initial determination that the comparative analysis fails to demonstrate that the processes, strategies, evidentiary standards, and other factors used in designing and applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in the relevant classification are comparable to, and applied no more stringently than, those used in designing and applying the limitation to medical/surgical benefits in the classification. Pursuant to § 146.137(d)(3), the plan submits a corrective action plan and additional comparative analyses within 45 calendar days after the initial determination, and the Secretary then determines that the additional comparative analyses do not demonstrate compliance with the requirements of this paragraph (c)(4). The plan receives a final determination of noncompliance from the Secretary, which informs the plan that it is not in compliance with this paragraph (c)(4) and directs the plan not to impose the nonquantitative treatment limitation by a certain date, unless and until the plan demonstrates compliance to the Secretary or takes appropriate action to remedy the violation. The plan makes no changes to its plan terms by that date and continues to impose the nonquantitative treatment limitation.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(G) (*Example 7*), the plan violates the requirements of this paragraph (c)(4) by imposing the nonquantitative treatment limitation after the Secretary directs the plan not to impose it, pursuant to paragraph (c)(4)(vii) of this section.

(H) *Example 8 (Provider network admission standards not more restrictive and compliant with requirements for design and application of NQTLs)*—(*1*) *Facts.* As part of a plan's standards for provider admission to its network, in the outpatient, in-network classification, any provider seeking to contract with the plan must have a certain number of years of supervised clinical experience. As a result of that standard, master's level mental health therapists are required to obtain supervised clinical experience beyond their licensure, while master's level medical/surgical providers, psychiatrists, and Ph.D.-level psychologists do not require additional experience beyond their licensure already requires supervised clinical experience. The plan collects and evaluates relevant data in a manner reasonably designed to assess the impact of the nonquantitative treatment limitation. This includes in-network and out-of-network utilization rates (including data related to provider claim submissions), network adequacy metrics (including time and distance data, and data on providers accepting new patients), and provider reimbursement rates (including as compared to billed charges). This data demonstrates that participants and beneficiaries seeking outpatient care are able to access outpatient, in-network mental health and substance use disorder providers at the same frequency as outpatient, in-network medical/surgical providers, that mental health and substance use disorder providers are active in the network and are accepting new patients to the same extent as medical/surgical providers, and that mental health and substance use disorder providers are within similar time and distances to plan participants and beneficiaries as are medical/surgical providers. This data also does not identify material differences in what the plan or issuer pays psychiatrists or non-physician mental health providers, compared to physicians or non-physician medical/surgical providers, respectively, both for the same reimbursement codes and as compared to Medicare rates.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(H) (*Example 8*), the plan does not violate this paragraph (c)(4). The standards for this nonquantitative treatment limitation, namely provider admission to the plan's network, are applied to at least two-thirds of all medical/surgical benefits in the outpatient, in-network classification, as it applies to all medical/surgical benefits in the classification. The most common or frequent variation of this nonquantitative treatment limitation (the predominant nonquantitative treatment limitation) that applies to substantially all medical/surgical benefits in the classification is having a certain number of years of supervised clinical experience. The standards for provider admission to the plan's network that are imposed with respect to mental health or substance use disorder benefits are no more restrictive, as written or in operation, than the predominant variation of the nonquantitative treatment limitation applicable to substantially all medical/surgical benefits in the classification, because the standards do not limit access to the full range of treatment options available for a condition or disorder under the plan or coverage as compared to medical/surgical benefits in the same classification. The requirement that providers have a certain number of years of supervised clinical experience that the plan relied upon to design and apply the nonquantitative treatment limitation is not considered to discriminate against mental health or substance use disorder benefits, even though this results in the requirement that master's level mental health therapists obtain supervised clinical experience beyond their licensure, unlike master's level medical/surgical providers. In addition, as written and in operation, the processes, strategies, evidentiary standards, or other factors used in applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical/surgical benefits in the classification, because the plan applies the same standard to all providers in the classification. Finally, the plan or issuer collects and evaluates relevant data in a manner reasonably designed to assess the impact of the nonquantitative treatment limitation on access to mental health and substance use disorder benefits, which does not show material differences in access to in-network mental health and substance use disorder benefits as compared to in-network medical/surgical benefits in the classification.

(I) *Example 9 (More restrictive requirement for primary caregiver participation applied to ABA therapy)*—(*1*) *Facts.* A plan generally applies medical necessity criteria in adjudicating claims for coverage of all outpatient, in-network medical/surgical and mental health and substance use disorder benefits, including ABA therapy for the treatment of ASD, which is a mental health condition. The plan's medical necessity criteria for coverage of ABA therapy requires evidence that the participant's or beneficiary's primary caregivers actively participate in ABA therapy, as documented by consistent attendance in parent, caregiver, or guardian training sessions. In adding this requirement, the plan deviates from independent professional medical or clinical standards, and there are no similar medical necessity criteria requiring evidence of primary caregiver participation in order to receive coverage of any medical/surgical benefits.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(I) (*Example 9*), the plan violates paragraph (c)(4)(i) of this section. The plan applies medical necessity criteria to at least two-thirds of all outpatient, in-network medical/surgical benefits, as they apply to all medical/surgical benefits in the classification. The most common or frequent variation of this nonquantitative treatment limitation (the predominant nonquantitative treatment limitation) that applies to substantially all medical/surgical benefits in the classification does not include the requirement to provide evidence that the participant's or beneficiary's primary caregivers actively participate in the treatment. The plan does not qualify for the exception in paragraph (c)(4)(i)(E) of this section in applying its restriction on coverage for ABA therapy because the plan deviates from the independent professional medical or clinical standards by imposing a different requirement. As a result, the nonquantitative treatment limitation imposed on mental health and substance use disorder benefits is more restrictive than the predominant medical necessity requirement imposed on substantially all medical/surgical benefits in the classification (which does not include the requirement to provide evidence that primary caregivers actively participate in treatment). Because the plan violates the rules of paragraph (c)(4)(i) of this section, this example does not analyze compliance with paragraph (c)(4)(ii) or (iv) of this section.

(J) *Example 10 (More restrictive exclusion for experimental or investigative treatment applied to ABA therapy)*—(*1*) *Facts.* A plan, as written, generally excludes coverage for all treatments that are experimental or investigative for both medical/surgical benefits and mental health and substance use disorder benefits in the outpatient, in-network classification. As a result, the plan generally excludes experimental treatment of medical conditions and surgical procedures, mental health conditions, and substance use disorders when no professionally recognized treatment guidelines define clinically appropriate standards of care for the condition or disorder and fewer than two randomized controlled trials are available to support the treatment's use with respect to the given condition or disorder. The plan provides benefits for the treatment of ASD, which is a mental health condition, but, in operation, the plan excludes coverage for ABA therapy to treat children with ASD, deeming it experimental. More than one professionally recognized treatment guideline defines clinically appropriate standards of care for ASD and more than two randomized controlled trials are available to support the use of ABA therapy to treat certain children with ASD.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(J) (*Example 10*), the plan violates the rules of paragraph (c)(4)(i) of this section. The coverage exclusion for experimental or investigative treatment applies to at least two-thirds of all medical/surgical benefits, as it applies to all medical/surgical benefits in the outpatient, in-network classification. The most common or frequent variation of this nonquantitative treatment limitation in the classification (the predominant nonquantitative treatment limitation) applicable to substantially all medical/surgical benefits is the exclusion under the plan for coverage of experimental treatment of medical/surgical conditions when no professionally recognized treatment guidelines define clinically appropriate standards of care for the condition or disorder and fewer than two randomized controlled trials are available to support the treatment's use with respect to the given condition or procedure. In operation, the exclusion for experimental or investigative treatment imposed on ABA therapy is more restrictive than the predominant variation of the nonquantitative treatment limitation for experimental or investigative treatment imposed on

substantially all medical/surgical benefits in the classification because the exclusion limits access to the full range of treatment options available for a condition or disorder under the plan or coverage as compared to medical/surgical benefits in the same classification. Because the plan violates the rules of paragraph (c)(4)(i) of this section, this example does not analyze compliance with paragraph (c)(4)(ii) or (iv) of this section.

(K) *Example 11 (Separate EAP exhaustion treatment limitation applicable only to mental health benefits)*—(*1*) *Facts.* An employer maintains both a major medical plan and an employee assistance program (EAP). The EAP provides, among other benefits, a limited number of mental health or substance use disorder counseling sessions, which, together with other benefits provided by the EAP, are not significant benefits in the nature of medical care. Participants are eligible for mental health or substance use disorder benefits under the major medical plan only after exhausting the counseling sessions provided by the EAP. No similar exhaustion requirement applies with respect to medical/surgical benefits provided under the major medical plan.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(K) (*Example 11*), limiting eligibility for mental health and substance use disorder benefits under the major medical plan until EAP benefits are exhausted is a nonquantitative treatment limitation subject to the parity requirements of this paragraph (c). Because the limitation does not apply to medical/surgical benefits, it is a separate nonquantitative treatment limitation applicable only to mental health and substance use disorder benefits that violates paragraph (c)(4)(vi) of this section. Additionally, this EAP would not qualify as excepted benefits under § 146.145(b)(3)(vi)(B)(*1*) because participants in the major medical plan are required to use and exhaust benefits under the EAP (making the EAP a gatekeeper) before an individual is eligible for benefits under the plan.

(L) *Example 12 (Separate residential exclusion treatment limitation applicable only to mental health benefits)*—(*1*) *Facts.* A plan generally covers inpatient, in-network and inpatient out-of-network treatment in any setting, including skilled nursing facilities and rehabilitation hospitals, provided other medical necessity standards are satisfied. The plan also has an exclusion for residential treatment, which the plan defines as an inpatient benefit, for mental health and substance use disorder benefits. This exclusion was not generated through any broader nonquantitative treatment limitation (such as medical necessity or other clinical guideline).

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(L) (*Example 12*), the plan violates the rules of paragraph (c)(4)(vi) of this section. Because the plan does not apply a comparable exclusion to inpatient benefits for medical/surgical conditions, the exclusion of residential treatment is a separate nonquantitative treatment limitation applicable only to mental health and substance use disorder benefits in the inpatient, in-network and inpatient, out-of-network classifications that does not apply with respect to any medical/surgical benefits in the same benefit classification.

(M) *Example 13 (Standards for provider admission to a network)*—(*1*) *Facts.* A plan applies nonquantitative treatment limitations related to network composition in the outpatient in-network and inpatient, in-network classifications. The plan's networks are constructed by separate service providers for medical/surgical benefits and mental health and substance use disorder benefits. For purposes of this example, these facts assume that these nonquantitative treatment limitations related to network composition for mental health and substance use disorder benefits are not more restrictive than the predominant nonquantitative treatment limitations applied to substantially all medical/surgical benefits in the classifications under paragraph (c)(4)(i) of this section. The facts also assume that, as written and in operation, the processes, strategies, evidentiary standards, and other factors used in designing and applying the nonquantitative treatment limitations related to network access to mental health or substance use disorder benefits in the outpatient in-network and inpatient in-network classifications are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, and other factors used in designing and applying the nonquantitative treatment limitations with respect to medical/surgical benefits in the classifications, as required under paragraph (c)(4)(ii) of this section. The plan collects and evaluates all relevant data in a manner reasonably designed to assess the impact of the nonquantitative treatment limitations related to network composition on access to mental health and substance use disorder benefits as compared with access to medical/surgical benefits and considers the impact as part of the plan's or issuer's analysis of whether the standards, in operation, comply with paragraphs (c)(4)(i) and (ii) of this section. The plan determined that the data did not reveal any material differences in access. That data included metrics relating to the time and distance from plan participants and beneficiaries to network providers in rural and urban regions; the number of network providers accepting new patients; the proportions of mental health and substance use disorder and medical/surgical providers and facilities that provide services in rural and urban regions who are in the plan's network; provider reimbursement rates; in-network and out-of-network utilization rates (including data related to the dollar value and number of provider claims submissions); and survey data from participants on the extent to which they forgo or pay out-of-pocket for treatment because of challenges finding in-network providers. The efforts the plan made when designing and applying its nonquantitative treatment limitations related to network composition, which ultimately led to its outcomes data not revealing any material differences in access to benefits for mental health or substance use disorders as compared with medical/surgical benefits, included making sure that the plan's service providers are making special efforts to enroll available providers, including by authorizing greater compensation or other inducements to the extent necessary, and expanding telehealth arrangements as appropriate to manage regional shortages. The plan also notifies participants in clear and prominent language on its website, employee brochures, and the summary plan description of a toll-free number available to help participants find in-network providers. In addition, when plan participants submit bills for out-of-network items and services, the plan directs their service providers to reach out to the treating providers and facilities to see if they will enroll in the network.

(*2*) *Conclusion.* In this paragraph (c)(4)(viii)(M) (*Example 13*), the plan does not violate this paragraph (c)(4). As stated in the Facts section, the plan's nonquantitative treatment limitations related to network composition comply with the rules of paragraphs (c)(4)(i) and (ii) of this section. The plan collects and evaluates relevant data, as required under paragraph (c)(4)(iv)(A) of this section, and the data does not reveal any material differences in access to mental health and substance use disorder benefits as compared to medical/surgical benefits, as a result of the

actions the plan took (as set forth in the facts) when initially designing its nonquantitative treatment limitations related to network composition. Because the plan takes comparable actions to ensure that their mental health and substance use disorder provider network is as accessible as their medical/surgical provider network and exercises careful oversight over both their service providers and the comparative robustness of the networks with an eye to ensuring that network composition results in access to in-network benefits for mental health and substance use disorder services that is as generous as for medical/surgical services, plan participants and beneficiaries can access covered mental health and substance use disorder services and benefits as readily as medical/surgical benefits. This is reflected in the plan's carefully designed metrics and assessment of network composition.

* * * * *

(d) * * *

(3) *Provisions of other law.* Compliance with the disclosure requirements in paragraphs (d)(1) and (2) of this section is not determinative of compliance with any other provision of applicable Federal or State law. In particular, in addition to those disclosure requirements, provisions of other applicable law require disclosure of information relevant to medical/surgical, mental health, and substance use disorder benefits. For example, § 147.136 of this subchapter sets forth rules regarding claims and appeals, including the right of claimants (or their authorized representative) upon appeal of an adverse benefit determination (or a final internal adverse benefit determination) to be provided upon request and free of charge, reasonable access to and copies of all documents, records, and other information relevant to the claimant's claim for benefits. This includes documents with information on medical necessity criteria for both medical/surgical benefits and mental health and substance use disorder benefits, as well as the processes, strategies, evidentiary standards, and other factors used to apply a nonquantitative treatment limitation with respect to medical/surgical benefits and mental health or substance use disorder benefits under the plan and the comparative analyses and other applicable information required by § 146.137.

(e) * * *

(4) *Coordination with EHB requirements.* Nothing in paragraph (f) or (g) of this section or § 146.137(g) changes the requirements of §§ 147.150 and 156.115 of this subchapter, providing that a health insurance issuer offering non-grandfathered health insurance coverage in the individual or small group market providing mental health and substance use disorder services, including behavioral health treatment services, as part of essential health benefits required under §§ 156.110(a)(5) and 156.115(a) of this subchapter, must comply with the requirements under section 2726 of the PHS Act and its implementing regulations in this subchapter to satisfy the requirement to provide coverage for mental health and substance use disorder services, including behavioral health treatment, as part of essential health benefits.

* * * * *

(i) * * *

(1) *In general.* Except as provided in paragraph (i)(2) of this section, this section applies to group health plans and health insurance issuers offering group health insurance coverage on the first day of the first plan year beginning on or after January 1, 2025. Until the applicability date in the preceding sentence, plans and issuers are required to continue to comply with 45 CFR 146.136, revised as of October 1, 2021.

* * * * *

(j) *Severability.* If any provision of this section is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of invalidity or unenforceability, in which event the provision shall be severable from this section and shall not affect the remainder thereof or the application of the provision to persons not similarly situated or to dissimilar circumstances.

■ 9. Add § 146.137 to read as follows:

§ 146.137 Nonquantitative treatment limitation comparative analysis requirements.

(a) *Meaning of terms.* Unless otherwise stated in this section, the terms of this section have the meanings indicated in § 146.136(a)(2).

(b) *In general.* In the case of a group health plan (or health insurance issuer offering group health insurance coverage in connection with a group health plan) that provides both medical/surgical benefits and mental health or substance use disorder benefits and that imposes any nonquantitative treatment limitation on mental health or substance use disorder benefits, the plan or issuer must perform and document a comparative analysis of the design and application of each nonquantitative treatment limitation applicable to mental health or substance use disorder benefits. Each comparative analysis must comply with the content requirements of paragraph (c) of this section and be made available to the Secretary, upon request, in the manner required by paragraphs (d) and (e) of this section.

(c) *Comparative analysis content requirements.* With respect to each nonquantitative treatment limitation applicable to mental health or substance use disorder benefits under a group health plan (or health insurance coverage offered in connection with a group health plan), the comparative analysis performed by the plan or issuer must include, at minimum, the elements specified in this paragraph (c). In addition to the comparative analysis for each nonquantitative treatment limitation, each plan or issuer must prepare and make available to the Secretary, upon request, a written list of all nonquantitative treatment limitations imposed under the plan or coverage and a general description of any information considered or relied upon by the plan or issuer in preparing the comparative analysis for each nonquantitative treatment limitation.

(1) *Description of the nonquantitative treatment limitation.* The comparative analysis must include, with respect to the nonquantitative treatment limitation that is the subject of the comparative analysis:

(i) Identification of the nonquantitative treatment limitation, including the specific terms of the plan or coverage or other relevant terms regarding the nonquantitative treatment limitation, the policies or guidelines (internal or external) in which the nonquantitative treatment limitation appears or is described, and the applicable sections of any other relevant documents, such as provider contracts, that describe the nonquantitative treatment limitation;

(ii) Identification of all mental health or substance use disorder benefits and medical/surgical benefits to which the nonquantitative treatment limitation applies, including a list of which benefits are considered mental health or substance use disorder benefits and which benefits are considered medical/surgical benefits;

(iii) A description of which benefits are included in each classification set forth in § 146.136(c)(2)(ii)(A); and

(iv) Identification of the predominant nonquantitative treatment limitation applicable to substantially all medical/surgical benefits in each classification,

including an explanation of how the plan or issuer determined which variation is the predominant nonquantitative treatment limitation as compared to other variations, as well as how the plan identified the variations of the nonquantitative treatment limitation.

(2) *Identification and definition of the factors used to design or apply the nonquantitative treatment limitation.* The comparative analysis must include, with respect to every factor considered or relied upon to design the nonquantitative treatment limitation or apply the nonquantitative treatment limitation to mental health or substance use disorder benefits and medical/surgical benefits:

(i) Identification of all of the factors considered, as well as the evidentiary standards considered or relied upon to design or apply each factor and the sources from which each evidentiary standard was derived, in determining which mental health or substance use disorder benefits and which medical/surgical benefits are subject to the nonquantitative treatment limitation; and

(ii) A definition of each factor, including:

(A) A detailed description of the factor; and

(B) A description of each evidentiary standard (and the source of each evidentiary standard) identified under paragraph (c)(2)(i) of this section.

(3) *Description of how factors are used in the design and application of the nonquantitative treatment limitation.* The comparative analysis must include a description of how each factor identified and defined pursuant to paragraph (c)(2) of this section is used in the design or application of the nonquantitative treatment limitation to mental health and substance use disorder benefits and medical/surgical benefits in a classification, including:

(i) A detailed explanation of how each factor identified and defined in paragraph (c)(2) of this section is used to determine which mental health or substance use disorder benefits and which medical/surgical benefits are subject to the nonquantitative treatment limitation;

(ii) An explanation of the evidentiary standards or other information or sources (if any) considered or relied upon in designing or applying the factors or relied upon in designing and applying the nonquantitative treatment limitation, including in the determination of whether and how mental health or substance use disorder benefits or medical/surgical benefits are subject to the nonquantitative treatment limitation;

(iii) If the application of the factor depends on specific decisions made in the administration of benefits, the nature of the decisions, the timing of the decisions, and the professional designation and qualifications of each decision maker;

(iv) If more than one factor is identified and defined in paragraph (c)(2) of this section, an explanation of:

(A) How all of the factors relate to each other;

(B) The order in which all the factors are applied, including when they are applied;

(C) Whether and how any factors are given more weight than others; and

(D) The reasons for the ordering or weighting of the factors; and

(v) Any deviation(s) or variation(s) from a factor, its applicability, or its definition (including the evidentiary standards used to define the factor and the information or sources from which each evidentiary standard was derived), such as how the factor is used differently to apply the nonquantitative treatment limitation to mental health or substance use disorder benefits as compared to medical/surgical benefits, and a description of how the plan or issuer establishes such deviation(s) or variation(s).

(4) *Demonstration of comparability and stringency as written.* The comparative analysis must evaluate whether, in any classification, under the terms of the plan (or health insurance coverage) as written, any processes, strategies, evidentiary standards, or other factors used in designing and applying the nonquantitative treatment limitation to mental health or substance use disorder benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in designing and applying the nonquantitative treatment limitation with respect to medical/surgical benefits. The comparative analysis must include, with respect to the nonquantitative treatment limitation and the factors used in designing and applying the nonquantitative treatment limitation:

(i) Documentation of each factor identified and defined in paragraph (c)(2) of this section that was applied to determine whether the nonquantitative treatment limitation applies to mental health or substance use disorder benefits and medical/surgical benefits in a classification, including, as relevant:

(A) Quantitative data, calculations, or other analyses showing whether, in each classification in which the nonquantitative treatment limitation applies, mental health or substance use disorder benefits and medical/surgical benefits met or did not meet any applicable threshold identified in the relevant evidentiary standard, and the evaluation of relevant data as required under § 146.136(c)(4)(iv)(A), to determine that the nonquantitative treatment limitation would or would not apply; and

(B) Records maintained by the plan or issuer documenting the consideration and application of all factors and evidentiary standards, as well as the results of their application;

(ii) In each classification in which the nonquantitative treatment limitation applies to mental health or substance use disorder benefits, a comparison of how the nonquantitative treatment limitation, as written, is applied to mental health or substance use disorder benefits and to medical/surgical benefits, including the specific provisions of any forms, checklists, procedure manuals, or other documentation used in designing and applying the nonquantitative treatment limitation or that address the application of the nonquantitative treatment limitation;

(iii) Documentation demonstrating how the factors are comparably applied, as written, to mental health or substance use disorder benefits and medical/surgical benefits in each classification, to determine which benefits are subject to the nonquantitative treatment limitation; and

(iv) An explanation of the reason(s) for any deviation(s) or variation(s) in the application of a factor used to apply the nonquantitative treatment limitation, or the application of the nonquantitative treatment limitation, to mental health or substance use disorder benefits as compared to medical/surgical benefits, and how the plan or issuer establishes such deviation(s) or variation(s), including:

(A) In the definition of the factors, the evidentiary standards used to define the factors, and the sources from which the evidentiary standards were derived;

(B) In the design of the factors or evidentiary standards; or

(C) In the application or design of the nonquantitative treatment limitation.

(5) *Demonstration of comparability and stringency in operation.* The comparative analysis must evaluate whether, in any classification, under the terms of the plan (or health insurance coverage) in operation, the processes, strategies, evidentiary standards, or other factors used in designing and applying the nonquantitative treatment limitation to mental health or substance

use disorder benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in designing and applying the limitation with respect to medical/surgical benefits. The comparative analysis must include, with respect to the nonquantitative treatment limitation and the factors used in designing and applying the nonquantitative treatment limitation:

(i) A comprehensive explanation of how the plan or issuer ensures that, in operation, the processes, strategies, evidentiary standards, or other factors used in designing and applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in a classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in designing and applying the nonquantitative treatment limitation with respect to medical/surgical benefits, including:

(A) An explanation of any methodology and underlying data used to demonstrate the application of the nonquantitative treatment limitation, in operation; and

(B) The sample period, inputs used in any calculations, definitions of terms used, and any criteria used to select the mental health or substance use disorder benefits and medical/surgical benefits to which the nonquantitative treatment limitation is applicable;

(ii) Identification of the relevant data collected and evaluated as required under § 146.136(c)(4)(iv)(A);

(iii) An evaluation of the outcomes that resulted from the application of the nonquantitative treatment limitation to mental health or substance use disorder benefits and medical/surgical benefits, including the relevant data as required under § 146.136(c)(4)(iv)(A);

(iv) A detailed explanation of material differences in outcomes evaluated pursuant to paragraph (c)(5)(iii) of this section that are not attributable to differences in the comparability or relative stringency of the nonquantitative treatment limitation as applied to mental health or substance use disorder benefits and medical/surgical benefits and the bases for concluding that material differences in outcomes are not attributable to differences in the comparability or relative stringency of the nonquantitative treatment limitation; and

(v) A discussion of any measures that have been or are being implemented by the plan or issuer to mitigate any material differences in access to mental health or substance use disorder benefits as compared to medical/surgical benefits, including the actions the plan or issuer is taking under § 146.136(c)(4)(iv)(B)(*1*) to address material differences to ensure compliance with § 146.136(c)(4)(i) and (ii).

(6) *Findings and conclusions.* The comparative analysis must address the findings and conclusions as to the comparability of the processes, strategies, evidentiary standards, and other factors used in designing and applying the nonquantitative treatment limitation to mental health or substance use disorder benefits and medical/surgical benefits within each classification, and the relative stringency of their application, both as written and in operation, and include:

(i) Any findings or conclusions indicating that the plan or coverage is not (or might not be) in compliance with the requirements of § 146.136(c)(4), including any actions the plan or issuer has taken or intends to take to address any potential areas of concern or noncompliance;

(ii) A reasoned and detailed discussion of the findings and conclusions described in paragraph (c)(6)(i) of this section;

(iii) Citations to any additional specific information not otherwise included in the comparative analysis that supports the findings and conclusions described in paragraph (c)(6)(i) of this section;

(iv) The date of the analysis and the title and credentials of all relevant persons who participated in the performance and documentation of the comparative analysis; and

(v) If the comparative analysis relies upon an evaluation by a reviewer or consultant considered by the plan or issuer to be an expert, an assessment of each expert's qualifications and the extent to which the plan or issuer ultimately relied upon each expert's evaluation in performing and documenting the comparative analysis of the design and application of each nonquantitative treatment limitation applicable to both mental health or substance use disorder benefits and medical/surgical benefits.

(d) *Requirements related to submission of comparative analyses to the Secretary upon request*—(1) *Initial request by the Secretary for comparative analysis.* A group health plan or health insurance issuer offering group health insurance coverage must make the comparative analysis required by paragraph (b) of this section available and submit it to the Secretary within 10 business days of receipt of a request from the Secretary (or an additional period of time specified by the Secretary).

(2) *Additional information required after a comparative analysis is deemed to be insufficient.* In instances in which the Secretary determines that the plan or issuer has not submitted sufficient information under paragraph (d)(1) of this section for the Secretary to review the comparative analysis required in paragraph (b) of this section, the Secretary will specify to the plan or issuer the additional information the plan or issuer must submit to the Secretary to be responsive to the request under paragraph (d)(1) of this section. Any such information must be provided to the Secretary by the plan or issuer within 10 business days after the Secretary specifies the additional information to be submitted (or an additional period of time specified by the Secretary).

(3) *Initial determination of noncompliance, required action, and corrective action plan.* In instances in which the Secretary reviewed the comparative analysis submitted under paragraph (d)(1) of this section and any additional information submitted under paragraph (d)(2) of this section, and made an initial determination that the plan or issuer is not in compliance with the requirements of § 146.136(c)(4) or this section, the plan or issuer must respond to the Secretary and specify the actions the plan or issuer will take to bring the plan or coverage into compliance, and provide to the Secretary additional comparative analyses meeting the requirements of paragraph (b) of this section that demonstrate compliance with § 146.136(c)(4) and this section, not later than 45 calendar days after the Secretary's initial determination that the plan or issuer is not in compliance.

(4) *Requirement to notify participants and beneficiaries of final determination of noncompliance*—(i) *In general.* If the Secretary makes a final determination of noncompliance, the plan or issuer must notify all participants and beneficiaries enrolled in the plan or coverage that the plan or issuer has been determined to not be in compliance with the requirements of § 146.136(c)(4) or this section with respect to such plan or coverage. Such notice must be provided within 7 calendar days of receipt of the final determination of noncompliance, and the plan or issuer must provide a copy of the notice to the Secretary, and any service provider involved in the claims process.

(ii) *Content of notice.* The notice to participants and beneficiaries required in paragraph (d)(4)(i) of this section

shall be written in a manner calculated to be understood by the average plan participant and must include, in plain language, the following information in a standalone notice:

(A) The following statement prominently displayed on the first page, in no less than 14-point font: ''Attention! The Department of Health and Human Services has determined that [insert the name of group health plan or health insurance issuer] is not in compliance with the Mental Health Parity and Addiction Equity Act.'';

(B) A summary of changes the plan or issuer has made as part of its corrective action plan specified to the Secretary following the initial determination of noncompliance, including an explanation of any opportunity for a participant or beneficiary to have a claim for benefits reprocessed;

(C) A summary of the Secretary's final determination that the plan or issuer is not in compliance with § 146.136(c)(4) or this section, including any provisions or practices identified as being in violation of MHPAEA, additional corrective actions identified by the Secretary in the final determination notice, and information on how participants and beneficiaries can obtain from the plan or issuer a copy of the final determination of noncompliance;

(D) Any additional actions the plan or issuer is taking to come into compliance with § 146.136(c)(4) or this section, when the plan or issuer will take such actions, and a clear and accurate statement explaining whether the Secretary has indicated that those actions, if completed, will result in compliance; and

(E) Contact information for questions and complaints, and a statement explaining how participants and beneficiaries can obtain more information about the notice, including:

(*1*) The plan's or issuer's phone number and an email or web portal address; and

(*2*) The Center for Medicare and Medicaid Services' phone number and email or web portal address.

(iii) *Manner of notice.* The plan or issuer must make the notice required under paragraph (d)(4)(i) of this section available in paper form, or electronically (such as by email or an internet posting) if:

(A) The format is readily accessible;

(B) The notice is provided in paper form free of charge upon request; and

(C) In a case in which the electronic form is an internet posting, the plan or issuer timely notifies the participant or beneficiary in paper form (such as a postcard) or email, that the documents are available on the internet, provides the internet address, includes the statement required in paragraph (d)(4)(ii)(A) of this section, and notifies the participant or beneficiary that the documents are available in paper form upon request.

(e) *Requests for a copy of a comparative analysis.* In addition to making a comparative analysis available upon request to the Secretary, a plan or issuer must make available a copy of the comparative analysis required by paragraph (b) of this section when requested by:

(1) Any applicable State authority; and

(2) A participant or beneficiary (or a provider or other person acting as a participant's or beneficiary's authorized representative) who has received an adverse benefit determination related to mental health or substance use disorder benefits.

(f) *Rule of construction.* Nothing in this section or § 146.136 shall be construed to prevent the Secretary from acting within the scope of existing authorities to address violations of § 146.136 or this section.

(g) *Applicability.* The provisions of this section apply to group health plans and health insurance issuers offering group health insurance coverage described in § 146.136(e), to the extent the plan or issuer is not exempt under § 146.136(f) or (g), for plan years beginning on or after January 1, 2025.

(h) *Severability.* If any provision of this section is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of invalidity or unenforceability, in which event the provision shall be severable from this section and shall not affect the remainder thereof or the application of the provision to persons not similarly situated or to dissimilar circumstances.

■ 9. Amend § 146.180 by:

■ a. Revising paragraph (a)(2);

■ b. Redesignating paragraphs (a)(3) through (7) as paragraphs (a)(4) through (8);

■ c. Adding new paragraph (a)(3);

■ d. Revising newly redesignated paragraphs (a)(5) and (a)(7)(i) and paragraph (f)(1); and

■ e. Adding paragraph (f)(4)(iii).

The revisions and additions read as follows:

§ 146.180 Treatment of non-Federal governmental plans.

(a) * * *

(2) *General rule.* For plans years beginning on or after September 23, 2010, a sponsor of a non-Federal governmental plan may elect to exempt its plan, to the extent the plan is not provided through health insurance coverage (that is self-funded), from one or more of the requirements described in paragraphs (a)(1)(iv) through (vii) of this section, except as provided in paragraphs (a)(3) and (f)(1) of this section with respect to the requirements described in paragraph (a)(1)(v) of this section.

(3) *Sunset of election option related to parity in mental health and substance use disorder benefits.* A sponsor of a non-Federal governmental plan may not newly elect to exempt its plan(s) from the requirements described in paragraph (a)(1)(v) of this section on or after December 29, 2022.

* * * * *

(5) *Examples*—(i) *Example 1.* A non-Federal governmental employer has elected to exempt its self-funded group health plan from all of the requirements described in paragraph (a)(1) of this section. The plan year commences September 1 of each year. The plan is not subject to the provisions of paragraph (a)(2) of this section until the plan year that commences on September 1, 2011. Accordingly, for that plan year and any subsequent plan years, the plan sponsor may elect to exempt its plan only from the requirements described in paragraphs (a)(1)(iv) through (vii) of this section, subject to paragraphs (a)(3) and (f)(1) of this section with respect to the requirements described in paragraph (a)(1)(v) of this section.

(ii) *Example 2.* A non-Federal governmental employer has elected to exempt its collectively bargained self-funded plan from all of the requirements described in paragraph (a)(1) of this section. The collective bargaining agreement applies to 5 plan years, October 1, 2009 through September 30, 2014. For the plan year that begins on October 1, 2014, the plan sponsor is no longer permitted to elect to exempt its plan from the requirements described in paragraphs (a)(1)(i) through (iii) of this section. Accordingly, for that plan year and any subsequent plan years, the plan sponsor may elect to exempt its plan only from the requirements described in paragraphs (a)(1)(iv) through (vii) of this section, subject to paragraphs (a)(3) and (f)(1) of this section with respect to the requirements described in paragraph (a)(1)(v) of this section.

* * * * *

(7) * * *

(i) Subject to paragraph (a)(7)(ii) of this section, the purchase of stop-loss or excess risk coverage by a self-funded

non-Federal governmental plan does not prevent an election under this section.

* * * * *

(f) * * *

(1) *Election renewal.* A plan sponsor may renew an election under this section through subsequent elections. Notwithstanding the previous sentence and except as provided in paragraph (f)(4)(iii) of this section, an election with respect to the requirements described in paragraph (a)(1)(v) of this section expiring on or after June 27, 2023, may not be renewed. The timeliness standards described in paragraph (c) of this section apply to election renewals under paragraph (f) of this section.

* * * * *

(4) * * *

(iii) In the case of a plan that is subject to multiple collective bargaining agreements of varying lengths and that has an election with respect to the requirements described in paragraph (a)(1)(v) of this section in effect as of December 29, 2022, that expires on or after June 27, 2023, the plan may extend such election until the date on which the term of the last such agreement expires.

* * * * *

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

■ 10. The authority citation for part 147 continues to read as follows:

Authority: 42 U.S.C. 300gg through 300gg–63, 300gg–91, 300gg–92, and 300gg–111 through 300gg–139, as amended, and section 3203, Pub. L. 116–136, 134 Stat. 281.

■ 11. Revise § 147.160 to read as follows:

§ 147.160 Parity in mental health and substance use disorder benefits.

(a) *In general.* The provisions of §§ 146.136 and 146.137 of this subchapter apply to individual health insurance coverage offered by a health insurance issuer in the same manner and to the same extent as such provisions apply to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the large group market.

(b) *Applicability date.* The provisions of this section apply for policy years beginning on or after January 1, 2026. Until the applicability date in the preceding sentence, issuers are required to continue to comply with 45 CFR 147.160, revised as of October 1, 2021. This section applies to non-grandfathered and grandfathered health plans as defined in § 147.140.

[FR Doc. 2023–15945 Filed 7–31–23; 8:45 am]

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Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 1, 2, 4, et al.

Federal Acquisition Regulations; Proposed Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 4, 5, 7, 9, 10, 11, 12, 13, 15, 18, 23, 26, 36, 37, 39, 42, and 52

[FAR Case 2022–006, Docket No. 2022–0006, Sequence No. 1]

RIN 9000–AO43

Federal Acquisition Regulation: Sustainable Procurement

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to restructure and update the regulations to focus on current environmental and sustainability matters and to implement a requirement for agencies to procure sustainable products and services to the maximum extent practicable.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before October 2, 2023, to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2022–006 to the Federal eRulemaking portal at *https://www.regulations.gov* by searching for ''FAR Case 2022–006''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2022–006''. Follow the instructions provided on the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2022–006'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite ''FAR Case 2022–006'' in all correspondence related to this case. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at *https://www.regulations.gov/faq*). To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Hawes, Procurement Analyst, at 202–255–9194 or by email at *jennifer.hawes@gsa.gov,* for clarification of content. For information pertaining to status, publication schedules, or alternate instructions for submitting comments if *https://www.regulations.gov* cannot be used, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAR Case 2022–006.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR to restructure and update FAR part 23 to focus on current environmental and sustainability matters and to implement a requirement for agencies to procure sustainable products and services to the maximum extent practicable. On December 8, 2021, the President signed Executive Order (E.O.) 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability. Section 208(a) directs agencies to reduce emissions, promote environmental stewardship, support resilient supply chains, drive innovation, incentivize markets for sustainable products and services, purchase sustainable products and services in accordance with relevant statutory requirements, and, to the maximum extent practicable, purchase sustainable products and services identified or recommended by the Environmental Protection Agency (EPA). The Executive Office of the President's Office of Management and Budget (OMB), Council on Environmental Quality (CEQ), and Climate Policy Office jointly issued Memorandum M–22–06 on the same date to provide direction for agency compliance with the E.O. Paragraph G of section I of the memorandum reiterates the requirement to purchase, to the maximum extent practicable and after meeting statutory mandates, sustainable products and services identified or recommended by EPA. The relevant purchasing requirements established by statute, as indicated in that memorandum, are for the following types of products:

- Products containing recovered material identified by EPA's Comprehensive Procurement Guideline Program;
- Biobased products in categories designated by the Department of Agriculture (USDA);
- Energy efficient products certified by ENERGY STAR® and energy and water efficient products designated by the Department of Energy Federal Energy Management Program (DOE–FEMP); and
- Products made with or containing acceptable alternatives to ozone-depleting substances listed by EPA's Significant New Alternatives Policy (SNAP) program.

These statutory purchasing programs are currently implemented in FAR part 23, especially in subparts 23.2, 23.4, and 23.8.

The required EPA programs, as listed in Memorandum M–22–06, that identify sustainable products and services include: WaterSense®; Safer Choice; SmartWay Transport partners and SmartWay products; and EPA Recommendations of Specifications, Standards, and Ecolabels for Federal Purchasing. The requirement to procure these types of environmentally preferable products and services are currently implemented at FAR subpart 23.7. Paragraph (b)(1) of FAR section 23.703 directs agencies to employ acquisition strategies that maximize the utilization of environmentally preferable products and services (based on EPA-issued guidance). This subpart also currently includes the requirement to procure environmentally preferable products and Electronic Product Environmental Assessment Tool (EPEAT®)-registered products, which are examples of EPA Recommendations of Specifications, Standards, and Ecolabels for Federal Purchasing.

In August 2022, CEQ issued Implementing Instructions for E.O. 14057. Section 4.6 of the instructions reiterates the requirement to first ensure compliance with statutory purchasing programs and then ensure procurement of products and services identified by the required EPA programs in all contract actions and purchases. It also directed prioritization of multi-attribute products and services that meet at least one statutory purchasing program and one or more of the non-statutory EPA programs. The instructions also delineate when it is considered not practicable to procure sustainable products and services and provide a listing of helpful resources for identifying and understanding sustainable products and services.

The CEQ implementing instructions provide additional direction as it relates to Federal facility requirements, such as goals for pollution prevention and waste diversion and requirements for waste reduction. The instructions also provide direction for certain construction and modernization projects to meet and

(where practicable) exceed the CEQ's Guiding Principles for Sustainable Federal Buildings and Associated Instructions (Guiding Principles) (available at *https://www.sustainability.gov/pdfs/guiding_principles_for_sustainable_federal_buildings.pdf*).

II. Discussion and Analysis

In addition to implementing the requirements in E.O. 14057 and the associated implementing instructions, DoD, GSA, and NASA are using this opportunity to restructure and streamline FAR part 23. As discussed in section II.A. of this preamble, under this effort, FAR part 23 is proposed to be amended to accomplish the following:

- Dedicate FAR part 23 to environmental matters.
- Consolidate purchasing programs requirements.
- Consolidate requirements related to hazardous and radioactive material.
- Consolidate Federal facility requirements.

DoD, GSA, and NASA are proposing to implement the requirements of E.O. 14057, Memorandum M–22–06, and the CEQ E.O. 14057 implementing instructions related to sustainable products and services by consolidating them at FAR subpart 23.1 (see discussion in section II.B. of this preamble). This revised subpart will address both statutory and EPA purchasing programs, except for SmartWay Program requirements, which will be considered under a separate FAR rulemaking. The subpart includes the proposed policy and procedures for purchasing and prioritizing sustainable products and services, to include requirements for agency programs, exceptions, exemptions, and a new omnibus contract clause.

DoD, GSA, and NASA are also proposing additional updates to requirements related to acquisition planning, special requirements for paper, waste reduction, construction and architect-engineer contracts, and information technology contracts to implement E.O. 14057 and the related CEQ implementing instructions. Several of these proposed changes update requirements established under an interim rule published under FAR Case 2010–001 (see 76 FR 31395, May 31, 2011) to align with current requirements under E.O. 14057. Any final rule resulting from this proposed rule will finalize the interim rule.

A. FAR Part 23 Restructuring

1. Dedicate FAR Part 23 to the Environment, Sustainable Acquisition, and Material Safety

In order to dedicate part 23 to environmental matters, sustainable acquisition, and material safety, DoD, GSA, and NASA are proposing to transfer the following two subparts to FAR part 26, Other Socioeconomic Programs:

- FAR subpart 23.5, Drug-Free Workplace.
- FAR subpart 23.11, Encouraging Contractor Policies to Ban Text Messaging While Driving.

This proposed rule does not propose any changes to the content of subpart 23.5 or 23.11, except to renumber the sections to 26.5 and 26.6, respectively, and to move the clause prescription section for Drug-Free Workplace to the end of its subpart. The associated clauses at FAR 52.223–6, Drug-Free Workplace, and 52.223–18, Encouraging Contractor Policies to Ban Text Messaging While Driving, are also proposed to be renumbered as FAR clause 52.226–XX and 52.226–YY, respectively, to associate these clauses with FAR part 26. Conforming changes are proposed throughout the FAR to update cross-references.

2. Consolidate Purchasing Program Requirements

DoD, GSA, and NASA are proposing to consolidate purchasing program requirements into a single subpart at FAR 23.1, to be titled ''Sustainable Products and Services.'' This subpart will include overarching policy and procedures to implement E.O. 14057 requirements for purchasing sustainable products and services (see discussion in section II.B. of this preamble) and will include two new sections to outline existing statutory purchasing programs and required EPA purchasing programs (FAR sections 23.107 and 23.108, respectively). Existing content related to statutory purchasing programs in the following FAR subparts is proposed to be transferred to and streamlined in the new section at FAR 23.107, titled ''Statutory purchasing programs'':

- FAR subpart 23.2, Energy and Water Efficiency and Renewable Energy.
- FAR subpart 23.4, Recovered Materials and Biobased Products.
- FAR subpart 23.8, Ozone-Depleting Substances and Greenhouse Gases.

The prescriptions for the following provisions and clauses associated with these subparts are transferred to FAR 23.109 organized under headings associated with the particular statutory purchasing programs:

- FAR provision 52.223–4, Recovered Material Certification.
- FAR clause 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-designated Items.
- FAR provision 52.223–1, Biobased Product Certification,
- FAR clause 52.223–2, Reporting of Biobased Products Under Service and Construction Contracts.
- FAR clause 52.223–11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons.
- FAR clause 52.223–12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners.
- FAR clause 52.223–20, Aerosols.
- FAR clause 52.223–21, Foams.

Changes to the content of these provisions and clauses, which implement various statutory certification and reporting requirements, are discussed under section II.B.6. of this preamble. The prescriptions for the clauses at FAR 52.223–15, Energy Efficiency in Energy-Consuming Products, and FAR 52.223–17, Affirmative Procurement of EPA-designated Items in Service and Construction Contracts, are not transferred to 23.109; these clauses are proposed to be removed and reserved (also addressed in section II.B.6. of this preamble).

The requirement to procure environmentally preferable products and EPEAT®-registered products currently implemented at FAR subpart 23.7 is proposed to be removed and replaced by the requirement to procure products and services that meet EPA Recommendations of Specifications, Standards, and Ecolabels in the new section at FAR 23.108–3. As discussed in section II.B.6. of this preamble, since EPEAT is one of EPA's recommendations, the following clauses associated with EPEAT and any alternates to these clauses are proposed to be removed and reserved:

- FAR 52.223–13, Acquisition of EPEAT®-Registered Imaging Equipment.
- FAR 52.223–14, Acquisition of EPEAT®-Registered Televisions.
- FAR 52.223–16, Acquisition of EPEAT®-Registered Personal Computer Products.

As a result of this consolidation, FAR subpart 23.2 will be dedicated to energy savings performance contracts, FAR subpart 23.4 will be repurposed to address Federal facility requirements (see discussion in section II.A.4 of this preamble), FAR subpart 23.7 will be removed, and FAR subpart 23.8 will be dedicated to greenhouse gas emissions. There are no proposed changes to the remaining content in FAR subpart 23.2

related to energy savings performance contracts or subpart 23.8 related to greenhouse gas emissions disclosures, except to renumber the sections and paragraphs. Conforming changes are proposed throughout the FAR to update cross-references.

3. Consolidate Hazardous and Radioactive Material Requirements

To further streamline FAR part 23, DoD, GSA, and NASA are proposing to consolidate the content of the following subparts in FAR subpart 23.3 under the new title ''Hazardous Material Identification, Material Safety Data, and Notice of Radioactive Materials'':

- FAR subpart 23.3, Hazardous Material Identification and Material Safety Data.
- FAR subpart 23.6, Notice of Radioactive Material.

This proposed rule does not include any proposed changes to the content of subpart 23.3 or 23.6, except to renumber the sections and paragraphs. Note, however, that DoD, GSA, and NASA have proposed changes to the greenhouse gas emissions disclosure requirements in subpart 23.8 under a separate proposed rule (see FAR case 2021–015, Disclosure of Greenhouse Gas Emissions and Climate-related Financial Risk, published 87 FR 68312, November 14, 2022). Conforming changes are proposed throughout the FAR to update cross-references.

4. Consolidate Federal Facility Requirements

DoD, GSA, and NASA are proposing to consolidate the following content related to Federal facilities in FAR subpart 23.4:

- FAR subpart 23.10, Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements.
- FAR subpart 23.9, Contractor Compliance with Environmental Management Systems.
- FAR section 23.705 prescription for the clause at FAR 52.223–10, Waste Reduction Program.

Proposed changes to these subparts and associated clauses are described in section II.C.2. of this preamble. Conforming changes are proposed throughout the FAR to update cross-references.

5. Derivation and Distribution Tables

Derivation and distribution tables are provided below to illustrate at the subpart level where content is derived from and where content will be distributed to as a result of this proposed rule. A presentation illustrating the overarching changes at the part/subpart level and more detailed tables illustrating changes at the section/paragraph level are provided as supplemental documents to this proposed rule. To access the presentation and tables, go to *https://www.regulations.gov,* search for ''FAR Case 2022–006,'' click ''Open Docket,'' and view ''Supporting Documents''.

The following derivation table illustrates where the contents in the proposed subparts in FAR parts 23 and 26 are derived from:

DERIVATION TABLE

Proposed FAR subpart	Old FAR subpart
23.1 Sustainable Products and Services	23.1 Sustainable Acquisition Policy. 23.2 Energy and Water Efficiency and Renewable Energy (Content related to energy-efficient products only). 23.4 Use of Recovered Materials and Biobased Products. 23.8 Ozone-Depleting Substances and Greenhouse Gases (Content related to ozone-depleting substances only).
23.2 Energy Savings Performance Contracts	23.2 Energy and Water Efficiency and Renewable Energy (Content related to energy-savings performance contracts only).
23.3 Hazardous Material Identification, Material Safety Data, and Notice of Radioactive Materials.	23.3 Hazardous Material Identification and Material Safety Data. 23.6 Notice of Radioactive Material.
23.4 Pollution Prevention, Environmental Management Systems, and Waste Reduction.	23.9 Contractor Compliance with Environmental Management Systems. 23.10 Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements.
23.8 Greenhouse Gas Emissions	23.8 Ozone-Depleting Substances and Greenhouse Gases (Content related to greenhouse gas emission disclosures only).
26.5 Drug-Free Workplace	23.5 Drug-Free Workplace.
26.6 Encouraging Contractor Policies to Ban Text Messaging While Driving.	23.11 Encouraging Contractor Policies to Ban Text Messaging While Driving.

The following distribution table illustrates where the current FAR part 23 subparts are distributed under this proposed rule:

DISTRIBUTION TABLE

Old FAR subpart	New FAR subpart or section
23.1 Sustainable Acquisition Policy	23.1 Sustainable Products and Services.
23.2 Energy and Water Efficiency and Renewable Energy.	23.107–3 Energy-consuming products. 23.2 Energy Savings Performance Contracts.
23.3 Hazardous Material Identification and Material Safety Data.	23.3 Hazardous Material Identification, Material Safety Data, and Notice of Radioactive Materials.
23.4 Use of Recovered Materials and Biobased Products.	23.107–1 Products containing recovered materials. 23.107–2 Biobased products.
23.5 Drug-Free Workplace	26.5 Drug-Free Workplace.
23.6 Notice of Radioactive Material	23.3 Hazardous Material Identification, Material Safety Data, and Notice of Radioactive Materials.

DISTRIBUTION TABLE—Continued

Old FAR subpart	New FAR subpart or section
23.7 Contracting for Environmentally Preferable Products and Services.	23.108–3 Products and services that are subject to EPA Recommendations of Specifications, Standards, and Ecolabels.
23.8 Ozone-Depleting Substances and Greenhouse Gases.	23.107–4 Products that contain, use, or are manufactured with ozone-depleting substances or products that contain or use high global warming potential hydrofluorocarbons. 23.8 Greenhouse Gas Emissions.
23.9 Contractor Compliance with Environmental Management Systems.	23.4 Pollution Prevention, Environmental Management Systems, and Waste Reduction.
23.10 Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements.	23.4 Pollution Prevention, Environmental Management Systems, and Waste Reduction.
23.11 Encouraging Contractor Policies to Ban Text Messaging While Driving.	26.6 Encouraging Contractor Policies to Ban Text Messaging While Driving.

B. Sustainable Products and Services

The following is a summary of the proposed changes to FAR subpart 23.1, to be titled ''Sustainable Products and Services,'' to implement requirements for purchasing sustainable products and services in E.O. 14057, Memorandum M–22–06, and the CEQ implementing instructions.

1. Definitions

A definition of ''sustainable products and services'' is proposed in FAR 2.101 and is applicable wherever the term is used in the FAR. The term is defined as products and services that are subject to and meet statutory purchasing program requirements or other EPA purchasing program requirements. For the statutory purchasing programs, the definition references the following types of products and includes a reference to the source statute, the lead agency implementing regulations, and the program website:

- Products containing recovered material designated by the U.S. Environmental Protection Agency (EPA) under the Comprehensive Procurement Guidelines.
- Energy efficient products that are ENERGY STAR® certified or Federal Energy Management Program (FEMP)-designated products.
- Biobased products meeting the USDA content requirements under the BioPreferred® program.
- Acceptable chemicals, products, and manufacturing processes listed under EPA's SNAP program, which ensures a safe and smooth transition away from substances that contribute to the depletion of stratospheric ozone.

The definition identifies the following required EPA purchasing programs and provides the link to each associated program website:

- WaterSense® labeled (water efficient) products and services.
- Safer Choice-certified products (products that contain safer chemical ingredients).
- Products and services that meet or exceed EPA Recommendations of Specifications, Standards, and Ecolabels.

As a result of the proposed changes described in section II.A. of this preamble, most of the definitions associated with the existing statutory purchasing programs are consolidated in FAR section 23.101, since these terms will only be used in FAR subpart 23.1. This includes the definitions of ''EPA-designated item,'' ''global-warming potential,'' ''high global warming potential,'' ''hydrofluorocarbons,'' and ''ozone-depleting substances.'' The definition of the term ''USDA-designated item'' is also transferred, but the term itself is changed to ''USDA-designated product category'' to better align with USDA program requirements.

The definitions of ''biobased product'' and ''recovered material'' in FAR 2.101 are also relevant to this revised subpart, but will remain in FAR part 2 since these terms are used throughout the FAR. Changes are proposed to the definition of ''biobased product'' to implement section 9002 of the Agricultural Act of 2014 (Pub. L. 113–79) and section 9001 of the Agriculture Improvement Act of 2018 (Pub. L. 115–334), which revised the definition of ''biobased product'' (see 7 U.S.C. 8101) for the purposes of the biobased procurement program. Changes are also proposed to the definition of ''recovered material'' to remove a pointer to an alternative definition applicable to FAR subpart 11.3 (see discussion in section II.C.1. of this preamble) and to add the statutory citation for the definition.

In addition, this rule proposes moving the definition of ''United States'' from FAR section 23.001 to FAR section 23.101. This change will make the definition applicable only in FAR subpart 23.1 where the statutory requirements for purchasing sustainable products and services are being consolidated. The definition is revised to cite Memorandum M–22–06 as the source of the definition and to clarify the definition is for the term when it is used in a geographical sense. Paragraph (9) of the definition of ''United States'' in FAR section 2.101 (the definition that is applicable throughout the FAR, except as specified) will also be revised to point to FAR section 23.101 as the source for the definition that is applicable to FAR subpart 23.1.

The existing definition of ''contract action'' currently in FAR section 23.101 remains. This definition, however, is revised to align with Memorandum M–22–06 by removing reference to any non-FAR based agreements. The list of excluded actions that are not subject to the FAR is not necessary, since definitions in the FAR are only applicable to actions that are subject to the FAR.

2. Scope and Authorities

Per FAR 23.100, Scope, the proposed subpart provides policies and procedures for the procurement of sustainable products and services. The requirements of FAR subpart 23.1 are applicable to all contract actions, including those using FAR part 12 procedures for the acquisition of commercial products, including commercially available off-the-shelf (COTS) items, and commercial services and acquisitions valued at or below the micro-purchase threshold. FAR section 23.102 is revised to cite E.O. 14057, Memorandum M–22–06, and the CEQ implementing instructions, as well as the authorities for the existing statutory purchasing programs to be consolidated at FAR section 23.107.

3. Policy

FAR 23.103(a) outlines the policy that agencies shall procure sustainable products and services to the maximum extent practicable. Procuring sustainable products and services will be considered practicable, unless an agency cannot: (1) competitively acquire a product or service within a reasonable

performance schedule; (2) acquire a product or service that meets reasonable performance requirements; or (3) acquire a product or service at a reasonable price. For ENERGY STAR® or FEMP-designated products, a price is reasonable if it is cost-effective over the life of the product taking energy cost savings into account. This standard maintains existing exceptions to the statutory mandates to purchase certain energy-efficient products, biobased products, and products containing recovered material. This rule proposes to apply this standard of what is ''practicable'' to the other categories of sustainable products and services.

FAR 23.103(b) establishes requirements for prioritizing sustainable products and services. Specifically, when procuring sustainable products and services, agencies shall ensure compliance with all applicable statutory purchasing programs (consolidated in FAR section 23.107) and prioritize multi-attribute sustainable products and services, *i.e.,* that meet the requirements of both a statutory purchasing program and a required EPA purchasing program. The prioritization also notes that contracting officers are not required to procure products and services that meet the required EPA purchasing programs (see programs listed in section 23.108 of subpart 23.1) when doing so would conflict with statutes, Executive orders, or regulations that impose domestic manufacturing and content requirements.

Finally, this proposed rule will revise the description of required products under contract actions for services that will be subject to the new policy; FAR 23.103(c) will describe such products as those that are: (1) delivered to the Government during performance; (2) acquired by the contractor for use in performing services under a Government contract where the cost of the products is a direct cost to a Government contract; or (3) furnished by the contractor for use by the Government, including use at Government-owned contractor-operated facilities. Paragraph (c)(2) reflects a change from the existing description of products acquired by the contractor for use in performing services at a Federally controlled facility to ensure products used in service contracts that are a direct cost to the Government are sustainable products. In addition, this description clarifies that products provided by the contractor during performance at Government-owned contractor-operated facilities are expected to be sustainable products. These changes are necessary to ensure that the Government procures sustainable products and services to the maximum extent practicable pursuant to E.O. 14057, Memorandum M–22–06, and the CEQ implementing instructions.

4. Procedures

General procedures to carry out the new policy are provided at FAR 23.104. Procuring sustainable products and services is generally considered practicable, but the contracting officer may consider a procurement not practicable based on a written justification from the requirements official. At FAR section 23.105, the rule will also continue to provide for certain exceptions, such as for weapon systems and contracts performed outside of the United States, unless the agency head determines that such application is in the interest of the United States, and other existing exceptions provided by statute. The proposed exemptions at FAR 23.106 are revised to align with the exemption authority provided in section 602 of E.O. 14057 to allow agency heads to exempt certain activities and acquisitions. The exemptions also allow the Director of National Intelligence to exempt certain intelligence activities. Some agency head exemptions require written notification to the Chair of the CEQ. Finally, a proposed exemption is included at FAR 23.106 where an agency head determines the supplies or services are to be used to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to facilitate provision of international disaster assistance; or to support response to an emergency or major disaster. In such circumstances, the agency head determination serves as the written justification, and the contracting officer is encouraged, but not required to procure sustainable products and services.

When there is a written justification that it is not practicable to procure sustainable products or services or an exception or exemption applies, and only some of the potential sustainable products and services are covered by the justification, exception, or exemption, the contracting officer must ensure that the solicitation and contract identify any sustainable products or services that are not subject to the requirements of FAR subpart 23.1 and the associated clause at FAR 52.223–XX, Sustainable Products and Services.

5. Purchasing Program Requirements

The specific requirements and resources associated with the purchasing programs will be consolidated in sections 23.107 and 23.108. FAR sections 23.107–1 through 23.107–4 will address the existing requirements for the four statutory purchasing programs for: products containing recovered materials; biobased products; energy-consuming and water-consuming products; and products that contain, use, or are manufactured with ozone-depleting substances and products that contain or use high global warming potential hydrofluorocarbons. Within these sections are summaries of the overarching programs, references to statutory authority and lead agency implementing regulations, agency program requirements, any special procedures for contracting officers, and web addresses for primary program resources and information. FAR sections 23.108–1 through 23.108–3 will address the required EPA purchasing programs: water efficient products; chemically-intensive products; and products and services that are subject to EPA Recommendations of Specifications, Standards, and Ecolabels. Each section describes the EPA program and provides web addresses for access to additional information about and resources for the programs.

6. Provisions and Clauses

FAR 23.109(a) prescribes a new clause at FAR 52.223–XX, Sustainable Products and Services, for use in all solicitations and contracts unless there is a written justification that it is not practicable to procure sustainable products and services, or an authorized exception or exemption applies, and the scope of the justification, exception, or exemption covers all potential sustainable products and services under a contract.

This clause directs contractors to deliver and furnish sustainable products and services for Government use, including use at Government-owned contractor-operated facilities; incorporate sustainable products and services into the construction of a public building or public works; and furnish sustainable products and services for contractor use in performing services under the contract, where the cost of the products is a direct cost to the contract (versus costs that are normally applied to a contractor's general and administrative expenses or indirect costs). However, the contractor is not required to provide sustainable products or services where the contracting officer has identified in the solicitation that a certain product or service is not subject to the clause. The clause provides direction to the contractor on how to prioritize statutory and multi-attribute sustainable products and services and refers the contractor to

the Green Procurement Compilation (available at *https://sftool.gov/greenprocurement*) as a resource that can be reviewed for a comprehensive list of sustainable products and services and other related sustainability guidance.

As discussed in section III. of this preamble, this new omnibus clause is included in the clause at FAR 52.212–5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services, and the clause at FAR 52.213–4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services). In the clause at FAR 52.212–5, the contracting officer will check the box next to FAR clause 52.223–XX to show that it applies to acquisition of commercial products and commercial services; this will be the case unless there is a written justification, exception, or exemption that covers all potential sustainable products and services in an acquisition. For simplified acquisitions, a new paragraph proposed at FAR 13.302–5 directs the contracting officer to remove FAR clause 52.223–XX from the clause at FAR 52.213–4 when there is a written justification, exception, or exemption that covers all potential sustainable products and services in an acquisition.

As mentioned in section II.A.2. of this preamble, several of the existing prescriptions for the provisions and clauses associated with statutory purchasing programs are transferred to FAR section 23.109:

- Paragraph (b) of this section provides the existing prescriptions for the provision at FAR 52.223–4 and the clause at FAR 52.223–9 associated with EPA-designated items.
- Paragraph (c) of this section provides the existing prescriptions for the provision at FAR 52.223–1 and the clause at FAR 52.223–2 related to biobased products in USDA-designated product categories.
- Paragraph (d) of this section, provides the existing prescriptions for the clauses at FAR 52.223–11, 52.223–12, 52.223–20, and 52.223–21 related to products containing ozone-depleting substances and hydrofluorocarbons.

Except for FAR provision 52.223–1, there are no proposed changes to the existing prescriptions for these provisions and clauses, except to relocate content to the new consolidated section. The prescription for FAR 52.223–1, Biobased Product Certification, is revised to highlight an existing categorical exception for certain biobased products (see FAR 23.105(d)). Based on this exception, certification is not required for a solicitation that includes biobased products to be used in military equipment (products or systems designed or procured for combat or combat-related missions), spacecraft systems, or launch support equipment.

There are no substantive changes proposed to the content of provision FAR 52.223–1, except to update the statutory references. Changes are proposed to the clause at FAR 52.223–2, to include a title change, the addition of defined terms, and removal of purchasing language that is now covered by the omnibus clause at FAR 52.223–XX. As a result, this clause will focus on the existing reporting requirements for biobased products in USDA-designated products, which are unchanged as a result of this proposed rule.

Changes are also proposed in FAR clauses 52.223–11 and 52.223–12 to remove the requirements to track and report annually in the System for Award Management the amount of hydrofluorocarbon contained in, added to, or taken out of equipment or appliances under a contract. While the underlying requirement for alternatives to higher global warming potential hydrofluorocarbons remains in the FAR, the Government is looking towards other greenhouse gas management and tracking efforts.

While there is no change to the prescription for Alternate I of FAR clause 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items, this alternate is proposed for removal from the list of annual representations and certifications at FAR 4.1202 and in the provision at FAR 52.204–8, Annual Representations and Certifications. The alternate requires a contractor employee to certify that (1) they are an officer or employee responsible for the performance of the contract and (2) that the percentage of recovered material content for EPA-designated items met the applicable contract specifications or other contractual requirements. This certification should occur at the end of contract performance, not at the entity level.

The clauses at FAR 52.223–15, Energy Efficiency in Energy-Consuming Products, and FAR 52.223–17, Affirmative Procurement of EPA-designated Items in Service and Construction Contracts, are proposed to be removed and reserved. These clauses direct contractors to provide in the performance of the contract energy efficient products or products containing recovered material content that are EPA-designated items. Both clauses are considered subsumed by the new omnibus clause at FAR 52.223–XX, which directs contractors to provide sustainable products and services in the performance of the contract, including ENERGY STAR® products, FEMP-designated products, and products containing recovered material designated by the EPA.

As mentioned in section II.A.2 of this preamble, all of the clauses associated with EPEAT® requirements and their associated prescription in FAR subpart 23.7 are proposed to be removed and reserved. These clauses are also no longer necessary, since the requirement to procure products and services that meet EPA Recommendations of Specifications, Standards, and Ecolabels is addressed in the new omnibus clause at FAR 52.223–XX. As discussed in section II.A.2. of this preamble, EPEAT® is one of EPA's Recommendations of Specifications, Standards, and Ecolabels.

7. Cross-References

This proposed rule will also update cross-references throughout the FAR to the requirements now consolidated in FAR subpart 23.1. Specifically, the listings of various purchasing programs in the following FAR sections are proposed to be replaced with a cross-reference to requirements related to the procurement of sustainable products and services (as defined in 2.101) in accordance with FAR subpart 23.1:

- FAR 7.103(p)(1) regarding acquisition planning requirements.
- FAR 11.002(d)(1) and (2) regarding describing agency needs.
- FAR 13.201(f) regarding acquisition at or below the micro-purchase threshold.
- FAR 42.302(a)(68)(ii) regarding contract administration requirements.

In addition, a revision is proposed at FAR 37.102(i) to change the cross-reference from FAR part 23 to FAR subpart 23.1. A revision is also proposed at FAR 39.101(a)(1)(ii) to refer to FAR subpart 23.1 instead of just EPEAT® standards in reference to acquiring information technology.

C. Other Changes

1. Special Requirements for Paper

The special requirements for paper in FAR subpart 4.3 and FAR section 11.303 are proposed for removal. This subpart and section implemented requirements from E.O. 13423, Strengthening Federal Environmental, Energy, and Transportation Management, and E.O. 13514, Federal Leadership in Environmental, Energy, and Economic Performance, both of which are revoked.

FAR subpart 4.3 promotes the use of electronic commerce and directs agencies to require contractors to print or copy double-sided on at least 30 percent postconsumer fiber paper, whenever practicable, for paper documents related to an acquisition to be submitted to the Government. The clause at FAR 52.204–4, Printed or Copied Double-Sided on Postconsumer Fiber Content Paper, requires printing or copying single-sided on at least 30 percent postconsumer fiber paper. Also, section 11.303 establishes additional content standards for paper. These special requirements for paper are no longer necessary, given that electronic commerce is the primary means of conducting acquisition-related activities, printing double-sided on recycled paper is a common practice, and agencies will be required to procure products (including paper) that meet the minimum recovered material content standards established by the EPA Comprehensive Procurement Guidelines.

2. Federal Facility Requirements

As discussed in section II.A.4. of this preamble, this proposed rule seeks to consolidate requirements related to Federal facilities in a single subpart. The following is a summary of the proposed changes to the content of the subpart.

a. Pollution Prevention and Right-to-Know Laws

The existing requirements currently in FAR subpart 23.10 and the clause at FAR 52.223–5, Pollution Prevention and Right-to-Know Information, are based on statute. This rule proposes to transfer the contents of the subpart and the prescription for the clause to FAR subpart 23.4. Alternates I and II to this clause, however, are being removed, since the alternates implement content from revoked Executive orders. This proposed rule does not make any changes to the remaining existing content, except to renumber the sections and paragraphs and turn the content currently at FAR 23.1002 into a definition of ''Federal facility.'' Conforming changes are proposed throughout the FAR to update cross-references.

b. Environmental Management Systems

This rule proposes to transfer existing requirements in FAR subpart 23.9 related to contractor compliance with an agency environmental management systems (EMS) to FAR subpart 23.4. This rule proposes changes to the policy to clarify that section 23.404 and the clause at FAR 52.223–19, Compliance with Environmental Management Systems, apply if an agency uses an EMS and contractor activities affect aspects of the agency's environmental management. This proposed change aligns with E.O. 14057 and the CEQ implementing instructions, which give agencies discretion to use an EMS to achieve the goals in E.O. 14057. Conforming changes are proposed throughout the FAR to update cross-references.

c. Waste Reduction Programs

This rule proposes to update FAR clause 52.223–10, Waste Reduction Program, to replace the reference to section 3(e) of E.O. 13423 with a reference to section 207 of E.O. 14057. This FAR clause is prescribed for use in all solicitations and contracts for contractor operation of Government-owned or -leased facilities and all solicitations and contracts for support services at Government-owned or -operated facilities; it requires the contractor to maintain a program to promote cost-effective waste reduction in all operations and facilities covered by a contract. The new E.O. and CEQ implementing instructions provide direction to agencies on pollution prevention and reducing waste, therefore this clause is retained; however, the prescription is transferred to FAR subpart 23.4 where facility-related requirements have been consolidated.

3. Construction and Architect-Engineer Contracts

This rule proposes to update agency requirements for construction and architect-engineer contracts at FAR 36.104(b)(1). Currently, agencies must ensure that all new construction, major renovation, or repair and alteration of Federal buildings complies with the Guiding Principles for Federal Leadership in High-Performance and Sustainable Buildings. This proposed rule will update this paragraph to align with the directive in the CEQ implementing instructions that all new construction and modernization projects greater than 25,000 gross square feet are designed, constructed, and maintained to meet and, wherever practicable, exceed Federal sustainable design and operations principles for new construction and modernization projects in accordance with the CEQ's Guiding Principles for Sustainable Federal Buildings and Associated Instructions (Guiding Principles) (available at *https://www.sustainability.gov/pdfs/guiding_principles_for_sustainable_federal_buildings.pdf*); and that all renovation projects of existing Federal buildings must use, to the greatest extent technically feasible and practicable, Federal sustainable design and operations principles for existing buildings in accordance with the Guiding Principles. FAR 36.104(b)(2) is also proposed to be removed and the goals in FAR 36.104(b)(5) are updated to require agencies to divert at least 50 percent of non-hazardous construction and demolition materials and debris.

4. Content Proposed for Removal

This rule proposes to remove the terms ''renewable energy'' and ''renewable energy technology'' from FAR section 2.101. As a result of the streamlining described in this proposed rule to direct agencies to procure sustainable products and services, including energy and water efficient products, the terms are no longer used in FAR parts 7, 11, or 23.

The term ''water consumption intensity'' is currently used at FAR 23.202 to describe broad agency policies from prior E.O.s to reducing potable water consumption intensity; while this objective is still relevant, such requirements are already implemented in the CEQ Guiding Principles for Sustainable Federal Buildings and associated instructions (Guiding Principles). As discussed in section II.C.3. of this preamble, FAR 36.104 directs agencies to ensure that all new construction, major renovation, or repair and alteration of Federal buildings complies with the Guiding Principles.

Similarly, the direction at FAR 23.202(b)(2) and (3) for agencies to use and manage water through water-efficient means, including storm water management in accordance with section 438 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17094), are covered in the CEQ Guiding Principles and, thus, proposed for removal.

Finally, the agency policy objectives described at FAR 23.703 are proposed for removal, since these objectives are covered by the streamlined procedures proposed under this rule. FAR 23.002 includes an overarching policy statement for the streamlined FAR part. In addition, the statement at FAR 23.703 regarding the statutory requirement to procure plastic ring carriers that are degradable (7 U.S.C. 8102(c)(1)) is proposed for removal, since the EPA implementing regulations at 40 CFR part 238 are directed at manufacturers and importers of plastic ring carriers. The implementing regulations also provide information on an approved consensus standard for plastic ring carriers, which may be incorporated into design

documents or scopes of work, as appropriate.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

The new clause proposed at FAR 52.223–XX, Sustainable Products and Services, is prescribed at FAR 23.109(a) for use in all solicitations and contracts, unless a justification, exception, or exemption applies to all potential sustainable products and services in an acquisition. The new omnibus clause will be required to be included in covered solicitations and contracts valued at or below the simplified acquisition threshold and for commercial products, including COTS items, or commercial services. It is necessary to apply the requirements of this clause to these types of acquisition to achieve the intended policy outcome, which is for the Government to meet statutory purchasing program requirements and to procure sustainable products and services under required EPA purchasing programs to the maximum extent practicable.

The following FAR clauses are proposed for removal under this FAR case and will no longer be listed in FAR clause 52.212–5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services, as applicable to acquisitions of commercial products or commercial services:

- FAR 52.223–13, Acquisition of EPEAT®-Registered Imaging Equipment, and its Alternate I.
- FAR 52.223–14, Acquisition of EPEAT®-Registered Televisions, and its Alternate I.
- FAR 52.223–15, Energy Efficiency in Energy-Consuming Products.
- 52.223–16, Acquisition of EPEAT®-Registered Personal Computer Products, and its Alternate I.

Since it is proposed for removal, FAR clause 52.223–15 will also no longer be listed in 52.213–4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services), as applicable to simplified acquisitions.

This rule does not include any proposed changes to the existing prescriptions for other FAR part 23 solicitation provisions or contract clauses, except to renumber the section or paragraph where content has been relocated to a new FAR part or subpart.

IV. Severability

If any portion (*e.g.,* section, clause, sentence) of this proposed rulemaking is held to be invalid or unenforceable facially, or as applied to any entity or circumstance, it shall be severable from the remainder of this rulemaking, and shall not affect the remainder thereof, or its application to entities not similarly situated or to other dissimilar circumstances. The various portions of this rule are independent and serve distinct purposes. Even if one aspect were rendered invalid, the other benefits of these rules would still be applicable. As an illustrative but not exhaustive example, were a court to stay or invalidate the proposed changes to subpart 23.1 regarding sustainable products and services, the agencies would intend the broader restructuring of FAR part 23 to remain effective.

V. Expected Impact of the Rule

A. FAR Part 23 Restructuring

Currently, FAR part 23 addresses various policy initiatives, ranging from requirements related to procuring sustainable products and services and other energy and environmental matters to requirements for a drug-free workplace and encouraging contractors to ban texting while driving. The FAR part has been revised to provide a cohesive message on the important role of sustainable acquisition and to provide clear policy and directions for the contracting and contractor communities. The proposed changes to restructure FAR part 23 will establish a clear and simplified framework for the Government to communicate requirements related to environmental matters and sustainable acquisition.

The proposed transfer of non-environmental matters to FAR part 26 is the first step to focus the messaging in FAR part 23 on the environment and sustainable acquisition. Then, within FAR part 23, existing content on similar topics, such as purchasing requirements, hazardous and radioactive material requirements, and Federal facility requirements, will be consolidated into single subparts to ensure that the contracting workforce is able to easily access and understand related policies and procedures. Finally, content based on revoked Executive orders, such as double-sided copying and printing requirements in FAR clause 52.204–4 and the alternates to FAR clause 52.223–5, is proposed for removal (see sections II.C.1. and II.C.2.a of this preamble). In addition, the contractors will no longer be required to comply with the annual hydrofluorocarbon reporting requirements contained in FAR clauses 52.223–11 and 52.223–12, which are proposed for removal (see discussion in section II.B.6. of this preamble).

B. Sustainable Products and Services

This proposed rule will not only consolidate content in FAR subpart 23.1, but also streamline and standardize the policy and procedures for purchasing sustainable products and services, which will help agencies and industry better understand and comply with the purchasing program requirements already implemented in the FAR. In accordance with direction provided under E.O. 14057, this rule proposes to require agencies to purchase sustainable products and services to the maximum extent practicable. This requirement is not new. Agencies are already required to ensure that the overwhelming majority of their contract actions meet the various purchasing program requirements. For example:

- FAR subpart 23.1 currently requires Federal agencies to advance sustainable acquisition by ensuring that 95 percent of new contract actions for the supply of products and for the acquisition of services (including construction) require that the products are energy-efficient (ENERGY STAR® or Federal Energy Management Program (FEMP)-designated); water-efficient; biobased; environmentally preferable, or non-toxic or less toxic alternatives); non-ozone depleting; or made with recovered materials.
- The existing statutory purchasing program requirements described in the proposed rule for consolidation in FAR section 23.107 are currently implemented in FAR subparts 23.2, 23.4, and 23.8.
- The requirement to procure products and services that meet other EPA purchasing programs described in proposed FAR section 23.108 clarifies the existing requirement at FAR 23.703(b)(1) for agencies to maximize the use of environmentally preferable products and services (based on EPA-issued guidance).
- While this proposed rule introduces the WaterSense® label by name, FAR subpart 23.7 already directs agencies to maximize environmentally preferable products and services based on EPA-issued guidance and to promote water conservation, which would include EPA's WaterSense® program. In addition, FAR subpart 23.2 currently directs agencies to procure DOE FEMP-designated products, which include water-consuming products with the WaterSense® label, and the CEQ Guiding Principles directed for use at

FAR 36.104 also address requirements for WaterSense® products.

• While the Safer Choice ecolabel is not currently referenced by name in the FAR, FAR subpart 23.7 directs agencies to give preference to the procurement of acceptable alternative chemicals and products that reduce overall risks to human health. Safer Choice is also a well-known ecolabel for products that contain safer chemicals, a label that many public institutions, private companies, and individuals seek out regardless of a directive to avoid exposure to toxic chemicals.

Under this proposed rule, agencies will be required to continue ensuring that products and services meet statutory purchasing program requirements and to prioritize multi-attribute products and services, which are products and services that meet more than one statutory purchasing program and one or more required EPA purchasing programs. What is practicable is defined in a uniform manner for all purchasing programs and aligns with existing statutory basis for not procuring energy-efficient products, biobased products, and products containing recovered material. In addition, the existing exceptions (such as those for acquisitions performed outside the United States, weapon systems, space systems, etc.) are maintained in this proposed rule. The proposed exemptions are also generally maintained, though an additional exemption for response to national emergencies is also provided.

Finally, this proposed rule seeks to establish a standard way for agencies to communicate the requirements for sustainable products and services to contractors via a new proposed contract clause at FAR 52.223–XX, Sustainable Products and Services. This new clause will enable agencies to communicate requirements for sustainable products and services in a uniform manner and to better enforce the requirement to procure sustainable products and services as a standard term and condition of a contract. In addition to making clear that agencies expect to have sustainable products and services delivered in performance of the contract, the proposed rule introduces a requirement that contracting officers to identify in the solicitation and contract any products and services that are subject to an exception or exemption per a written justification from the requiring activity. While contracting officers already work with requiring activities to document when they are not able to meet the existing statutory purchasing requirements, this proposed rule will ensure that this information is clearly communicated to offerors and contractors.

According to data available in the Federal Procurement Data System for fiscal years 2019 through 2021, on average approximately 85,826 contractors are awarded Federal contracts each year, of which approximately 61,797 contractors are small businesses. These contractors should be familiar with the existing purchasing requirements proposed for consolidation in FAR subpart 23.1. However, contractors will need to become familiar with the new omnibus clause at FAR 52.223–XX where they will find all applicable purchasing program requirements in one place. Contractors will no longer be required to review the stand-alone provisions and clauses at FAR 52.223–13, 52.223–14, 52.223–15, 52.223–16, and 52.223–17 proposed for removal under this rule, all of which provide varying instructions to contractors on the requirements for existing purchasing programs, such as ENERGY STAR®, FEMP, products containing recovered material, and EPEAT®-registered electronic products.

As stated, the policy for agencies to procure sustainable products and services is not new with the majority of these requirements being in place since 2011 though agencies have had some discretion in how to implement. This proposed rule will help the Government ensure it is meeting its goal to procure sustainable products and services to the maximum extent practicable in order to reduce emissions, save natural resources, and protect individuals, communities, and the environment. Contractors that do not currently prioritize or propose sustainable products and services when developing offers in response to Government contracts may need to adjust their internal processes and supply chains, as necessary, to ensure that they are in fact delivering sustainable products and services under Government contracts. While this additional burden is acknowledged, it is not possible to quantify the potential burden for such activities or to estimate the number of entities potentially impacted by this change in means of policy communication and enforcement.

C. Other Changes

While the clause at FAR 52.204–4 to require printing and copying double-sided on postconsumer fiber content paper is removed, the impact is not considered significant, since the majority of acquisitions are conducted electronically. Contractors will no longer be required to report information on hydrofluorocarbons under contracts that contain FAR clause 52.223–11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons, and 52.223–12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners, a reduction in burden for contractors. The alternates to FAR clause 52.223–5, Pollution Prevention and Right-to-Know Information, and associated reporting requirements related to agency EMS are also removed; however, per FAR 52.223–19, contractors will still be required to comply with any agency specific requirements for EMS.

VI. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA expect this proposed rule when final may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. An Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

E.O. 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, directs agencies to reduce emissions, promote environmental stewardship, support resilient supply chains, drive innovation, and incentivize markets for sustainable products and services. As part of this effort and pursuant to the OMB, CEQ, and CPO Memorandum M–22–06 and the CEQ Implementing Instructions for E.O. 14057, agencies are required to purchase, to the maximum extent practicable and after meeting statutory mandates, sustainable products and services identified or recommended by EPA.

DoD, GSA, and NASA are proposing to amend the FAR to restructure and update FAR part 23 to focus on current environmental and sustainability matters and to implement the requirements in E.O. 14057 and associated implementing instructions for agencies to procure sustainable products and services to the maximum extent practicable. Promulgation of the FAR is authorized by 40

U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

This proposed rule seeks to streamline FAR part 23 by dedicating the part to environmental matters, consolidating purchasing program requirements in FAR subpart 23.1, dedicating FAR subpart 23.2 to energy savings performance contracts, consolidating hazardous and radioactive material requirements in FAR subpart 23.3, consolidating Federal facility requirements in FAR subpart 23.4, and dedicating FAR subpart 23.8 to requirements associated with greenhouse gas emissions.

This rule proposes to implement the E.O. 14057 requirements for sustainable products and services in FAR subpart 23.1. As a result of this rule, the requirement for Federal agencies to ensure that 95 percent of new contract actions are for sustainable products and services is replaced with the requirement for agencies to procure sustainable products and services to the maximum extent practicable. In prioritizing sustainable products and services, agencies shall ensure they are meeting existing statutory mandates and prioritize multi-attribute products and services, which are those that meet both statutory and other required EPA purchasing program requirements.

Any small business competing on Federal contracts for products or services will need to become familiar with this rule. According to data available in the Federal Procurement Data System for fiscal years 2019 through 2021, on average approximately 85,826 contractors are awarded Federal contracts each year, of which approximately 61,797 contractors (72 percent) are small businesses.

Small businesses who do business with the Federal Government should be familiar with the existing statutory purchasing program requirements currently at FAR subparts 23.2, 23.4, and 23.8, as well as the requirement for agencies to procure environmentally preferable products, including EPEAT®-registered electronic products, in FAR subpart 23.7. Small businesses will need to become familiar with the new omnibus clause at FAR 52.223–XX, Sustainable Products and Services, which streamlines the purchasing program requirements in an omnibus clause. Small businesses will need to validate and ensure that they are providing products and services that fall into the following categories, unless the contracting officer has specified that certain sustainable products or services are not subject to the clause:

- Products containing recovered material designated by the EPA under the Comprehensive Procurement Guidelines (CPG) (see *https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#products*).
- Energy efficient products that are ENERGY STAR® certified or Federal Energy Management Program (FEMP)-designated products (see *https://www.energy.gov/eere/femp/search-energy-efficient-products* and *https://www.energystar.gov/products?s=mega*).
- Biobased products meeting the content requirement of the U.S. Department of Agriculture (USDA) under the BioPreferred® program (see *https://www.biopreferred.gov*).
- Acceptable chemicals, products, and manufacturing processes listed under EPA's Significant New Alternatives Policy (SNAP) program, which ensures a safe and smooth transition away from substances that contribute to the depletion of stratospheric ozone (see *https://www.epa.gov/snap*).
- WaterSense® labeled (water efficient) products and services (see *https://www.epa.gov/watersense/watersense-products*).
- Safer Choice-certified products (products that contain safer chemical ingredients) (see *https://www.epa.gov/saferchoice/products*).
- Products and services that meet EPA Recommendations of Specifications, Standards, and Ecolabels, demonstrated through third party certification (see *https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing*).

In addition to the resources identified for each purchasing program above, small businesses may also consult the Green Procurement Compilation available at *https://sftool.gov/greenprocurement,* which provides a comprehensive list of required sustainable products and services and other related sustainability guidance.

Finally, several existing reporting requirements are being removed. Small businesses will no longer be required to report information on hydrofluorocarbons under contracts that contain FAR clause 52.223–11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons, and 52.223–12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners. Reporting requirements associated with agency EMSs in the alternates to FAR clause 52.223–5, Pollution Prevention and Right-to-Know Information, are also removed, though small businesses would still be required to comply with any agency specific requirements for EMS.

This proposed rule does not duplicate, overlap, or conflict with other Federal rules. This proposed rule will continue to implement the following lead agency regulations on the statutory purchasing program requirements:

- EPA regulations on a Comprehensive Procurement Guideline for Products Containing Recovered Materials (40 CFR part 247).
- Department of Energy regulations on Agency Procurement of Energy Efficient Products (10 CFR part 436, subpart C).
- USDA regulations on Guidelines for Designating Biobased Products for Federal Procurement (7 CFR part 3201).
- EPA regulations on the Protection of Stratospheric Ozone; Significant New Alternatives Policy Program (40 CFR part 82, subpart G).

This rule does not include any proposed changes to the current greenhouse gas disclosure requirements at FAR 23.8 and the provision at FAR 52.223–22, except to renumber the section and paragraph numbers. DoD, GSA, and NASA have proposed changes to these requirements under a separate proposed rule (see FAR case 2021–015, Disclosure of Greenhouse Gas Emissions and Climate-related Financial Risk, published at 87 FR 68312, November 14, 2022).

There are no significant alternatives to the proposed rule that would accomplish the stated objectives to ensure that agencies procure sustainable products and services to the maximum extent practicable.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2022–006), in correspondence.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501–3521) applies because the proposed rule contains information collection requirements. The rule proposes to renumber FAR clause 52.223–6 to 52.226–XX and transfer its information collection requirements from OMB Control Number 9000–0107 to the new OMB Control Number 9000–0XXX for FAR part 26. The rule also proposes to remove the information collection requirements associated with coverage of EMS and facility compliance audits under FAR clause 52.223–5, and the requirement for contractors to report certain information related to hydrofluorocarbon content under FAR clauses 52.223–11 and 52.223–12. Accordingly, the Regulatory Secretariat Division has submitted to OMB a request for approval of a revision to ''OMB Control Number 9000–0107, Federal Acquisition Regulation Part 23 Requirements'' and approval of ''OMB Control Number 9000–0XXX, Federal Acquisition Regulation Part 26 Requirements.''

A. Public Reporting Burden

Public reporting burden for this collection of information includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

1. OMB Control Number 9000–0XXX, Federal Acquisition Regulation Part 26 Requirements

The annual reporting burden is estimated as follows:
Respondents: 228.
Total Annual Responses: 228.
Total Burden Hours: 114.

2. OMB Control Number 9000–0107, Federal Acquisition Regulation Part 23 Requirements

The annual reporting burden is estimated as follows:
Respondents: 34,527.
Total Annual Responses: 160,600.
Total Burden Hours: 706,089.

B. Request for Comments Regarding Paperwork Burden

Submit comments on these collections of information no later than October 2, 2023 through *https://www.regulations.gov* and follow the instructions on the site. All items submitted must cite ''OMB Control Number 9000–0XXX, Federal Acquisition Regulation Part 26 Requirements,'' or ''OMB Control Number 9000–0107, Federal Acquisition Regulation Part 23 Requirements,'' as applicable. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* For both sets of information collections, public comments are particularly invited on:

- The necessity of this collection of information for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility;
- The accuracy of the estimate of the burden of this collection of information;
- 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.

Requesters may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control Number 9000–0107, Federal Acquisition Regulation Part 23 Requirements, or OMB Control Number 9000–0XXX, Federal Acquisition Regulation Part 26 Requirements, in all correspondence.

List of Subjects in 48 CFR Parts 1, 2, 4, 5, 7, 9, 10, 11, 12, 13, 15, 18, 23, 26, 36, 37, 39, 42, and 52

Government procurement.

William F. Clark,
Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 1, 2, 4, 5, 7, 9, 10, 11, 12, 13, 15, 18, 23, 26, 36, 37, 39, 42, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 4, 5, 7, 9, 10, 11, 12, 13, 15, 18, 23, 26, 36, 37, 39, 42, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. In section 1.106, amend the table by—
■ a. Removing the entry for ''23.602'';
■ b. Revising the entry for ''52.223–2'';
■ c. Removing the entry for ''52.223–4'';
■ d. Revising the entry for ''52.223–5'';
■ e. Removing the entry for ''52.223–6(b)(5)'';
■ f. Revising the entries for ''52.223–9'', ''52.223–11'', ''52.223–12'', and ''52.223–22''; and
■ g. Adding in numerical order an entry for ''52.226–XX''.

The revisions and addition read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control No.
* * * * *	
52.223–2	9000–0107
52.223–5	9000–0107
* * * * *	
52.223–9	9000–0107
52.223–11	9000–0107
52.223–12	9000–0107
52.223–22	9000–0107
* * * * *	
52.226–XX	9000–XXXX
* * * * *	

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 3. Amend section 2.101, in paragraph (b)(2) by—
■ a. Revising the definition ''Biobased product'';
■ b. In the definition of ''Conviction'', removing ''23.5'' and ''23.503'' and adding ''26.5'' and ''26.503'' in their places, respectively;
■ c. In the definition of ''Energy-savings performance contract'':
■ i. Removing ''Energy-savings performance contract'' and adding ''Energy savings performance contract'' in its place; and
■ ii. Revising paragraph (3);
■ d. Revising the definition of ''Environmentally preferable'';
■ e. Removing the definitions of ''Global warming potential'' and ''High global warming potential hydrofluorocarbons'';
■ f. Revising the definition of ''Recovered material'';
■ g. Removing the definitions of ''Renewable energy'' and ''Renewable energy technology'';
■ h. In the definition of ''Sustainable acquisition'', removing from the introductory text ''acquiring goods'' and adding ''acquiring products'' in its place;
■ i. Adding in alphabetical order the definition ''Sustainable products and services'';
■ j. In the definition of ''United States'', revising paragraph (9); and
■ k. Removing the definition ''Water consumption intensity''.

The revisions and addition read as follows:

2.101 Definitions.

* * * * *

(b) * * *
(2) * * *

Biobased product means a product determined by the U.S. Department of Agriculture to be a commercial product or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials, or that is an intermediate ingredient or feedstock. The term includes, with respect to forestry materials, forest products that meet biobased content requirements, notwithstanding the market share the product holds, the age of the product, or whether the market for the product is new or emerging (7 U.S.C. 8101) (7 CFR 3201.2).

* * * * *

Energy savings performance contract

* * *

(3) Guarantee future energy and cost savings to the Government (42 U.S.C. 8287) (10 CFR 436.31).

Environmentally preferable means, in the case of a product or service, having a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service (section 314 of Pub. L. 107–314, 10 U.S.C. Chapter 223 Note).

* * * * *

Recovered material means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (42 U.S.C. 6903).

* * * * *

Sustainable products and services means products and services that are subject to and meet the following applicable statutory mandates and directives for purchasing:

(1) *Statutory purchasing programs.* (i) Products containing recovered material designated by the U.S. Environmental Protection Agency (EPA) under the Comprehensive Procurement Guidelines (42 U.S.C. 6962) (40 CFR part 247) (*https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#products*).

(ii) Energy- and water-efficient products that are ENERGY STAR® certified or Federal Energy Management Program (FEMP)-designated products (42 U.S.C. 8259b) (10 CFR part 436, subpart C) (*https://www.energy.gov/eere/femp/search-energy-efficient-products*) (*https://www.energystar.gov/products?s=mega*).

(iii) Biobased products meeting the content requirement of the U.S. Department of Agriculture under the BioPreferred® program (7 U.S.C. 8102) (7 CFR part 3201) (*https://www.biopreferred.gov*).

(iv) Acceptable chemicals, products, and manufacturing processes listed under EPA's Significant New Alternatives Policy (SNAP) program, which ensures a safe and smooth transition away from substances that contribute to the depletion of stratospheric ozone (42 U.S.C. 7671l) (40 CFR part 82, subpart G) (*https://www.epa.gov/snap*).

(2) *Required EPA purchasing programs.* (i) WaterSense® labeled (water efficient) products and services (*https://www.epa.gov/watersense/watersense-products*).

(ii) Safer Choice-certified products (products that contain safer chemical ingredients) (*https://www.epa.gov/saferchoice/products*).

(iii) Products and services that meet EPA Recommendations of Specifications, Standards, and Ecolabels (*https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing*).

* * * * *

United States * * *

(9) For use in subpart 23.1, see definition at 23.101.

* * * * *

PART4—ADMINISTRATIVE AND INFORMATION MATTERS

Subpart 4.3 [Removed and Reserved]

■ 4. Remove and reserve subpart 4.3.

4.602 [Amended]

■ 5. Amend section 4.602 by removing from paragraph (a)(3) ''products, and high-performance'' and adding ''products, services, and high-performance'' in its place.

4.1202 [Amended]

■ 6. Amend section 4.1202 by removing paragraph (a)(25) and redesignating paragraphs (a)(26) through (34) as paragraphs (a)(25) through (33).

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 7. Amend section 5.207 by revising paragraph (c)(11) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(c) * * *

(11) Sustainable acquisition requirements, such as a description of high-performance sustainable building practices required, if for design, construction, renovation, repair, or deconstruction (see part 23 and 36.104).

* * * * *

PART 7—ACQUISITION PLANNING

■ 8. Amend section 7.103 by revising paragraph (p) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(p) Ensuring that agency planners—

(1) Comply with the policy in 11.002(d) regarding procurement of sustainable products and services (as defined in 2.101) in accordance with subpart 23.1;

(2) Comply with the Guiding Principles for Sustainable Federal Buildings and Associated Instructions (Guiding Principles), for the design, construction, renovation, repair, or deconstruction of Federal buildings (see 36.104). The Guiding Principles can be accessed at *https://www.sustainability.gov/pdfs/guiding_principles_for_sustainable_federal_buildings.pdf;* and

(3) Require contractor compliance with Federal environmental requirements, when the contractor is operating Government-owned facilities or vehicles, to the same extent as the agency would be required to comply if the agency operated the facilities or vehicles.

* * * * *

■ 9. Amend section 7.105 by revising paragraph (b)(17) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(17) *Environmental and energy conservation objectives.* Discuss—

(i) All applicable environmental and energy conservation objectives associated with the acquisition (see part 23);

(ii) The applicability of an environmental assessment or environmental impact statement (see 40 CFR part 1502);

(iii) The proposed resolution of environmental issues; and

(iv) Any sustainable acquisition requirements to be included in the solicitation and contract (see 11.002 and part 23).

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

9.405 [Amended]

■ 10. Amend section 9.405 by removing from paragraph (a) ''23.506(e)'' and adding ''26.505(e)'' in its place.

9.406–1 [Amended]

■ 11. Amend section 9.406–1 by removing from paragraph (c) ''23.506(e)'' and adding ''26.505(e)'' in its place.

9.406–2 [Amended]

■ 12. Amend section 9.406–2 by—

■ a. Removing from paragraph (b)(1)(ii)(A) ''52.223–6'' and adding ''52.226–XX'' in its place; and

■ b. Removing from paragraph (b)(1)(ii)(B) ''23.504'' and adding ''26.504'' in its place.

9.406–4 [Amended]

■ 13. Amend section 9.406–4 by removing from paragraph (a)(1)(i) ''23.506'' and adding ''26.505'' in its place.

9.407–1 [Amended]

■ 14. Amend section 9.407–1 by removing from paragraph (d) ''23.506(e)'' and adding ''26.505(e)'' in its place.

9.407–2 [Amended]

■ 15. Amend section 9.407–2 by—

■ a. Removing from paragraph (a)(4)(i) ''52.223–6'' and adding ''52.226–XX'' in its place; and

■ b. Removing from paragraph (a)(4)(ii) ''23.504'' and adding ''26.504'' in its place.

PART 10—MARKET RESEARCH

■ 16. Amend section 10.001 by revising paragraph (a)(3)(v) to read as follows:

10.001 Policy.

(a) * * *

(3) * * *

(v) Ensure maximum practicable use of sustainable products and services (as defined in 2.101) in accordance with subpart 23.1;

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

■ 17. Amend section 11.002 by revising paragraphs (d)(1) and (d)(2) introductory text and adding paragraph (d)(3) to read as follows:

11.002 Policy.

* * * * *

(d)(1) Agencies shall procure sustainable products and services (as defined in 2.101) in accordance with subpart 23.1.

(2) Unless it is not practicable (see 23.104(a)) or an exception or exemption applies (see 23.105 and 23.106, respectively), agencies shall incorporate the use of sustainable products and services when—

* * * * *

(3) The Green Procurement Compilation (GPC) available at *https://sftool.gov/greenprocurement* provides a comprehensive list of sustainable products and services and other related sustainable acquisition guidance. Agencies should—

(i) Consult the GPC when determining which purchasing programs apply to a specific product or service; and

(ii) Incorporate into agency requirements any required standards, specifications, or ecolabels identified in the GPC for a specific product or service.

* * * * *

11.301 [Removed]

■ 18. Remove section 11.301.

11.302 [Redesignated as 11.301]

■ 19. Redesignate section 11.302 as section 11.301.

11.303 [Removed]

■ 20. Remove section 11.303.

11.304 [Redesignated as 11.302]

■ 21. Redesignate section 11.304 as section 11.302.

PART 12—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

12.503 [Amended]

■ 22. Amend section 12.503 by removing from paragraph (a)(8) ''23.501'' and adding ''26.501'' in its place.

12.504 [Amended]

■ 23. Amend section 12.504 by removing from paragraph (a)(10) ''23.5'' and adding ''26.5'' in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.006 [Amended]

■ 24. Amend section 13.006 by removing from paragraph (f) ''52.223–6'' and adding ''52.226–XX'' in its place.

13.201 [Amended]

■ 25. Amend section 13.201 by removing from paragraph (f) ''subparts 23.1, 23.2, 23.4, and 23.7'' and adding ''subpart 23.1'' in its place.

■ 26. Amend section 13.302–5 by adding paragraph (d)(5) to read as follows:

13.302–5 Clauses.

* * * * *

(d) * * *

(5) The contracting officer shall delete 52.223–XX, Sustainable Products and Services, from the clause at 52.213–4 and mark the paragraph as reserved when—

(i)(A) There is a written justification in accordance with 23.104(a) that it is not practicable to procure sustainable products and services;

(B) An exception under 23.105 applies; or

(C) An exemption under 23.106 applies; and

(ii) The scope of the written justification, exception, or exemption covers the entirety of the contract action requirements.

PART 15—CONTRACTING BY NEGOTIATION

15.603 [Amended]

■ 27. Amend section 15.603 by removing from paragraph (e) ''energy-savings'' and adding ''energy savings'' in its place.

PART 18—EMERGENCY ACQUISITIONS

■ 28. Amend section 18.202 by adding paragraph (e) to read as follows:

18.202 Defense or recovery from certain events.

* * * * *

(e) *Sustainable products and services.* Contracting officers are encouraged, but not required, to procure sustainable products and services if the head of the agency determines the supplies or services are to be used to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to facilitate provision of international disaster assistance; or to support response to an emergency or major disaster (see 23.106(c)).

PART 23—ENVIRONMENT, SUSTAINABLE ACQUISITION, AND MATERIAL SAFETY

■ 29. Revise the heading for part 23 to read as set forth above.

■ 30. Revise section 23.000 to read as follows:

23.000 Scope of part.

This part prescribes acquisition policies and procedures supporting the Government's program to protect and improve the quality of the environment, to foster markets for sustainable products and services, and to ensure proper handling and notification of hazardous materials.

■ 31. Amend section 23.001 by—

■ a. Removing the definition of ''Greenhouse gases'' and adding the definition of ''Greenhouse gas'' in its place; and

■ b. Removing the definition ''United States''.

The addition reads as follows:

23.001 Definitions.

* * * * *

Greenhouse gas means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, nitrogen trifluoride, or sulfur hexafluoride.

* * * * *

■ 32. Revise section 23.002 to read as follows:

23.002 Policy.

In accordance with section 208(a) of Executive Order 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, agencies shall reduce emissions, including greenhouse gas emissions; promote environmental stewardship; support resilient supply chains; drive

innovation; and incentivize markets for sustainable products and services.

■ 33. Revise subpart 23.1 to read as follows:

Subpart 23.1—Sustainable Products and Services

Subpart 23.1—Sustainable Products and Services

23.100 Scope of subpart.

This subpart provides policies and procedures for procuring sustainable products and services. This subpart applies to all contract actions, including those using part 12 procedures for the acquisition of commercial products, including commercially available off-the-shelf (COTS) items, and commercial services and acquisitions valued at or below the micro-purchase threshold.

23.101 Definitions.

As used in this subpart—

Contract action means any oral or written action that results in the purchase, rent, or lease of supplies or equipment, services, or construction.

Environmental Protection Agency (EPA)-designated item means a product that is or can be made with recovered material—

(1) That is listed by EPA in a procurement guideline (40 CFR part 247); and

(2) For which EPA has provided recommended recovered material content levels and other purchasing recommendations in a related Recovered Materials Advisory Notice (RMAN) (available at *https://www.epa.gov/smm/regulatory-background-comprehensive-procurement-guideline-program-cpg#rman*).

Global warming potential means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

High global warming potential hydrofluorocarbons means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at *https://www.epa.gov/snap/.*

Hydrofluorocarbons means compounds that only contain hydrogen, fluorine, and carbon.

Ozone-depleting substance means any substance the EPA designates in 40 CFR part 82 as—

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

United States, as defined in the Executive Office of the President's Office of Management and Budget, Council on Environmental Quality, and Climate Policy Office Memorandum M–22–06, when used in a geographical sense means—

(1) The fifty States;

(2) The District of Columbia;

(3) The commonwealths of Puerto Rico and the Northern Mariana Islands;

(4) The territories of Guam, American Samoa, and the United States Virgin Islands; and

(5) Associated territorial waters and airspace.

U.S. Department of Agriculture (USDA)-designated product category means a generic grouping of products that are or can be made with biobased materials—

(1) That are listed by USDA in a procurement guideline (7 CFR part 3201, subpart B); and

(2) For which USDA has provided purchasing recommendations (available at *https://www.biopreferred.gov*).

23.102 Authorities.

(a) Section 208 of Executive Order 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, dated December 8, 2021.

(b) Paragraph G of section I of the Executive Office of the President's Office of Management and Budget, Council on Environmental Quality, and Climate Policy Office Memorandum M–22–06, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, dated December 8, 2021.

(c) Implementing instructions for Executive Order 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, dated August 2022.

(d) The authorities referenced in 23.107 for statutory purchasing programs.

23.103 Policy.

(a) Agencies shall procure sustainable products and services (as defined in 2.101) to the maximum extent practicable.

(1) Procuring sustainable products and services is considered practicable, unless the agency cannot acquire products or services—

(i) Competitively within a reasonable performance schedule;

(ii) That meet reasonable performance requirements; or

(iii) At a reasonable price.

(2) For ENERGY STAR® or Federal Energy Management Program (FEMP)-designated products, a price is reasonable if it is cost-effective over the life of the product taking energy cost savings into account (42 U.S.C. 8259b(b)(2)). Life-cycle cost savings tools are available at *https://www.energystar.gov/buildings/save_energy_commercial_buildings/ways_save/energy_efficient_products* and *https://www.nrel.gov/analysis/tech-lcoe.html.*

(b) When procuring sustainable products and services, agencies shall—

(1) Ensure compliance with all applicable statutory purchasing program requirements (see 23.107); and

(2) Prioritize multi-attribute sustainable products and services (see 23.104(c)(2)).

(c) Regarding products under contract actions for services, the contractor is required to provide products that meet the definition of sustainable products and services at 2.101, if the products are—

(1) Delivered to the Government during performance;

(2) Acquired by the contractor for use in performing services under a Government contract where the cost of the products is a direct cost to a Government contract (versus costs which are normally applied to a contractor's general and administrative expenses or indirect costs); or

(3) Furnished by the contractor for use by the Government, including use at Government-owned contractor-operated facilities.

23.104 General procedures.

(a) *Maximum extent practicable.* If the requiring activity submits a written justification addressing the reasons described in 23.103(a), the contracting officer may consider it not practicable to procure sustainable products or services. A written justification may be for a specific product or service or at the line item or contract level. The contracting officer shall maintain the written justification in the contract file.

(b) *Identification.* The contracting officer shall ensure the solicitation and contract identify any products and services that are not subject to the requirements of this subpart and the clause at 52.223–XX, Sustainable Products and Services, based on the written justification under paragraph (a) of this section, an exception at 23.105, or an exemption at 23.106, unless the justification, exception, or exemption covers the entirety of the contract action requirements.

(c) *Prioritization.* Agencies shall prioritize sustainable products and services as follows:

(1) Procure products and services that meet all applicable statutory purchasing program requirements (see 23.107). When both an EPA-designated item (see 23.107–1) and a biobased product in a USDA-designated product category (see 23.107–2) could be used for the same purposes, and both meet the agency's needs, procure the EPA-designated item.

(2) Consistent with other statutory procurement requirements, prioritize multi-attribute sustainable products and services, which are those that meet all applicable statutory purchasing program requirements (see 23.107) and one or more required EPA purchasing programs (see 23.108).

(3) If no statutory purchasing program requirements apply, procure sustainable products and services that meet required EPA purchasing program requirements (see 23.108).

(4) Procure products and services that meet required EPA purchasing programs (see paragraph (2) of the definition of ''sustainable products and services'' in 2.101) unless doing so would conflict with statute, Executive order, or regulation that impose domestic manufacturing and content requirements, such as the Buy American statute (41 U.S.C. chapter 83; see part 25) and the Berry Amendment (10 U.S.C. 4862).

(d) *Resource.* The Green Procurement Compilation (GPC) available at *https://sftool.gov/greenprocurement* provides a comprehensive list of sustainable products and services and other related sustainable acquisition guidance. In addition to the resources identified for each purchasing program listed in 23.107 and 23.108, agencies should consult the GPC when determining which purchasing programs apply to a specific product or service.

23.105 Exceptions.

The following are excepted from the requirement to procure sustainable products and services:

(a) Contracts performed outside of the United States, unless the agency head determines that such application is in the interest of the United States.

(b) Weapon systems; however, compliance with applicable agency affirmative procurement programs is required for recovered materials per 23.107–1 (see 23.109(b)) (42 U.S.C. 6962) and for alternatives for ozone depleting substances per 23.107–4 (see 23.109(d)) (42 U.S.C. 7671l), unless a written justification exists as described at 23.104(a) (42 U.S.C. 6962(c)(1) and 7 U.S.C. 8102(a)(1)(B)).

(c) Energy-consuming products or systems designed or procured for combat or combat-related missions are not subject to the requirements in 23.107–3 (42 U.S.C. 8259b(a)(5)).

(d) Biobased products to be used in military equipment (products or systems designed or procured for combat or combat-related missions), spacecraft systems, or launch support equipment are not subject to the requirements in 23.107–2 (7 CFR 3201.3(e)).

23.106 Exemptions.

(a) The Director of National Intelligence may exempt an intelligence activity of the United States and related personnel, resources, and facilities to the extent the Director determines necessary to protect intelligence sources and methods from unauthorized disclosure.

(b) The head of an agency may exempt the following:

(1) Particular agency activities and related personnel, resources, and facilities when it is in the interest of national security, to protect intelligence sources and methods from unauthorized disclosure, or where necessary to protect undercover law enforcement operations from unauthorized disclosure. The agency shall notify the Chair of the Council on Environmental Quality (CEQ) in writing within 30 days of issuance of the exemption under this paragraph (b)(1).

(2) On an individual or class basis, any manned and unmanned vehicle, vessel, aircraft, or non-road equipment that is used in combat support, combat service support, military tactical or relief operations, or training for such operations or spaceflight vehicles, including associated ground-support equipment.

(c) Contracting officers are encouraged, but not required, to procure sustainable products and services if the head of the agency determines the supplies or services are to be used to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to facilitate provision of international disaster assistance; or to support response to an emergency or major disaster.

(d) The head of the agency may submit to the President, through the Chair of CEQ, a request for an exemption of an agency activity, and related personnel, resources, and facilities from this subpart for any reason not otherwise addressed in this section.

23.107 Statutory purchasing programs.

Agencies shall ensure compliance with statutory purchasing program requirements described in 23.107–1 through 23.107–4.

23.107–1 Products containing recovered materials.

(a) *Authorities.* The Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6962, as implemented at 40 CFR part 247.

(b) *EPA Comprehensive Procurement Guidelines (CPG) Program.* Under RCRA, EPA must designate items that are or can be made with recovered materials and must also recommend practices to assist procuring agencies in meeting their obligations.

(c) *Applicability.* (1) This section applies to contract actions involving an EPA-designated item, if—

(i) The price of the EPA-designated item exceeds $10,000; or

(ii) The aggregate amount paid for multiple purchases of the EPA-designated item, or a functionally equivalent item, in the preceding fiscal year was $10,000 or more.

(2) While micro-purchases are included in determining the aggregate amount paid under paragraph (c)(1) of this section, it is not necessary for an agency to track micro-purchases when—

(i) The agency anticipates the aggregate amount paid will exceed $10,000; or

(ii) The agency intends to establish or continue an affirmative procurement program as described in paragraph (d) of this section in the following fiscal year.

(d) *Agency affirmative procurement program.* An agency shall establish an affirmative procurement program for EPA-designated items if the agency's purchases of EPA-designated items

exceed the threshold set forth in paragraph (c)(1) of this section.

(1) Agency affirmative procurement programs must include—

(i) A recovered materials preference program;

(ii) A program to promote the recovered materials preference program;

(iii) A program for requiring reasonable estimates and certification of recovered material used in the performance of contracts, including a preaward certification that products will meet EPA recommendations (see 52.223–4, Recovered Material Certification), and either an estimate or a certification at contract completion (see 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items, and its Alternate), as well as agency procedures for verification of estimates and certifications;

(iv) Annual review and monitoring of the effectiveness of the affirmative procurement program; and

(v) Guidance for purchases of EPA-designated items at or below the micro-purchase threshold.

(2) Technical or requirements personnel and procurement personnel are responsible for the preparation, implementation, and monitoring of affirmative procurement programs.

(3) Agencies have a period of 1 year to revise their affirmative procurement program(s) after the designation of any new item by EPA.

(e) *Procedures.* The following procedures apply when the thresholds set forth in paragraph (c)(1) of this section are exceeded.

(1) Once an item has been designated by EPA, agencies shall purchase conforming products to the maximum extent practicable in accordance with 23.104(a), unless a justification, exception, or exemption applies (see 23.104(a), 23.105, and 23.106, respectively).

(2) Agencies may use their own specifications or commercial product descriptions when procuring products containing recovered materials; however, the contract should specify that the product is composed of the—

(i) Highest percentage of recovered materials practicable; or

(ii) Minimum content standards in accordance with EPA's RMANs.

(3) When acquiring products with recovered material, the contracting officer may request information or data on such products, including recycled content or related product standards (see 11.301(c)).

(f) *Resources.* (1) For information on EPA-designated items and associated minimum content standards, see *https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#products.*

(2) Contracting officers should also consult their agency's affirmative procurement program for agency-specific guidance.

23.107–2 Biobased products.

(a) *Authorities.* (1) The Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102, as implemented at 7 CFR part 3201.

(2) The Energy Policy Act of 2005, Public Law 109–58.

(b) *USDA BioPreferred® Program.* The BioPreferred Program was created in the 2002 Farm Bill and is managed by the USDA. The goal of the BioPreferred Program is to increase the purchase and use of biobased products (as defined in 2.101) by agencies.

(c) *Applicability.* (1) This section applies to contract actions involving a biobased product in a USDA-designated product category if—

(i) The price of the biobased product exceeds $10,000; or

(ii) The aggregate amount paid for multiple purchases of the biobased product, or for a functionally equivalent product, in the preceding fiscal year was $10,000 or more.

(2) While micro-purchases are included in determining the aggregate amount paid under paragraph (c)(1) of this section, it is not necessary for an agency to track micro-purchases when—

(i) The agency anticipates the aggregate amount paid will exceed $10,000; or

(ii) The agency intends to establish or continue an affirmative procurement program in the following fiscal year.

(d) *Agency affirmative procurement program.* An agency shall establish an affirmative procurement program for biobased products in USDA-designated product categories if the agency's purchases of such products exceed the threshold set forth in paragraph (c)(1) of this section.

(1) Agency affirmative procurement programs must include—

(i) A biobased products preference program;

(ii) A program to promote the biobased products preference program;

(iii) A program for requiring preaward certification that products meet USDA recommendations (see 52.223–1, Biobased Product Certification) and reporting on biobased products used in performance of contracts (see 52.223–2, Reporting of Biobased Products Under Service and Construction Contracts); and

(iv) Annual review and monitoring of the effectiveness of the program.

(2) Technical or requirements personnel and procurement personnel are responsible for the preparation, implementation, and monitoring of affirmative procurement programs.

(3) Agencies have a period of 1 year to revise their procurement program(s) after USDA updates any USDA-designated product categories.

(e) *Procedures.* The following procedures apply when the thresholds set forth in paragraph (c)(1) of this section are exceeded.

(1) Once a biobased product is included in a USDA-designated product category, agencies shall purchase conforming products to the maximum extent practicable in accordance with 23.104(a), unless a justification, exception, or exemption applies (see 23.104(a), 23.105, and 23.106, respectively).

(2) Agencies may use their own specifications or commercial product descriptions when procuring biobased products; however, the contract should specify that the biobased product is composed of the—

(i) Highest percentage of biobased material practicable; or

(ii) USDA's recommended minimum contents standards.

(3) When acquiring biobased products, the contracting officer may request information or data on such products, including biobased content or related standards of the products (see 11.301(c)).

(4) Agencies shall treat as eligible for the preference for biobased products, products from designated countries, as defined in 25.003, provided that those products—

(i) Meet the criteria for the definition of biobased product, except that the products need not meet the requirement that renewable agricultural materials or forestry materials in such product must be domestic; and

(ii) Otherwise meet all requirements for participation in the preference program.

(f) *Resources.* (1) For information on USDA-designated product categories and minimum content standards for biobased products, see *https://www.biopreferred.gov.*

(2) Contracting officers should also consult their agency's affirmative procurement program for agency-specific guidance.

23.107–3 Energy-consuming products and water-consuming products.

(a) *Authorities.* (1) Energy Policy and Conservation Act (42 U.S.C. 6361(a)(1)).

(2) National Energy Conservation Policy Act (42 U.S.C. 8253, 8259b, and 8262g).

(3) Executive Order 11912 of April 13, 1976, Delegations of Authority under the Energy Policy and Conservation Act.

(4) Executive Order 13221 of July 31, 2001, Energy-Efficient Standby Power Devices.

(b) *Programs*—(1) ENERGY STAR® *Program.* The ENERGY STAR® program is a voluntary product-labeling initiative that identifies and promotes energy and water efficiency and the reduction of greenhouse gas emissions. This joint U.S. EPA and Department of Energy program helps buyers save money and protect the environment through energy- and water-efficient products and practices.

(2) *Federal Energy Management Program (FEMP).* FEMP publishes acquisition guidance to help Federal buyers meet requirements for purchasing energy-efficient and water-efficient products. In addition, in product categories not covered by the ENERGY STAR® program, FEMP sets efficiency requirements for product categories that have the potential to generate significant Federal energy savings.

(c) *Procedures.* To the maximum extent practicable in accordance with 23.104(a), unless a justification, exception, or exemption applies (see 23.104(a), 23.105, and 23.106, respectively)—

(1) When acquiring energy- and water-consuming products listed in the ENERGY STAR® Program or FEMP—

(i) Agencies shall purchase ENERGY STAR® certified or FEMP-designated products; and

(ii) For products that consume power in a standby mode and are listed on FEMP's Low Standby Power Devices product listing *at https://www.energy.gov/eere/femp/low-standby-power-product-list,* agencies shall—

(A) Purchase items that meet FEMP's standby power wattage recommendation or document the reason for not purchasing such items; or

(B) If FEMP has listed a product without a corresponding wattage recommendation, purchase items that use no more than one watt in their standby power consuming mode. When it is impracticable to meet the one-watt requirement, agencies shall purchase items with the lowest standby wattage practicable; and

(2) When contracting for services or construction that will include the provision of energy- and water-consuming products, agencies shall specify products that comply with the applicable requirements in paragraph (c)(1) of this section.

(d) *Resources.* (1) For information on products under the ENERGY STAR® Program, go to *https://www.energystar.gov/products.*

(2) For information on energy-efficient products, go to *https://www.energy.gov/eere/femp/search-energy-efficient-products.*

(3) For information on low standby power products at *https://www.energy.gov/eere/femp/low-standby-power-product-purchasing-requirements-and-compliance-resources.*

23.107–4 Products that contain, use, or are manufactured with ozone-depleting substances or products that contain or use high global warming potential hydrofluorocarbons.

(a) *Authorities.* (1) Title VI of the Clean Air Act (42 U.S.C. 7671, *et seq.*).

(2) Section 706 of Division D, title VII of the Omnibus Appropriations Act, 2009 (Pub. L. 111–8).

(3) EPA regulations, Protection of Stratospheric Ozone (40 CFR part 82).

(b) *Program.* The EPA SNAP Program.

(c) *Agency programs.* Agencies shall implement cost-effective programs to minimize the procurement of materials and substances that contribute to the depletion of stratospheric ozone and/or result in the use, release, or emission of high global warming potential hydrofluorocarbons.

(d) *Procedures.* Agencies shall—

(1) Give preference to the procurement of acceptable alternative chemicals, products, and manufacturing processes that reduce overall risks to human health and the environment by minimizing—

(i) The depletion of ozone in the upper atmosphere; and

(ii) The potential use, release, or emission of high global warming potential hydrofluorocarbons;

(2) In preparing specifications and purchase descriptions and in the acquisition of products and services—

(i) Comply with the requirements of title VI of the Clean Air Act; section 706 of division D, title VII of Public Law 111–8; and 40 CFR 82.84(a)(2) through (5);

(ii) Substitute acceptable alternatives to ozone-depleting substances, as identified under 42 U.S.C. 7671k, to the maximum extent practicable, as provided in 40 CFR 82.84(a)(1), except in the case of Class I substances being used for specified essential uses, as identified under 40 CFR 82.4(n); and

(iii) Unless a particular contract requires otherwise, specify that, when feasible, contractors shall use another acceptable alternative in lieu of a high global warming potential hydrofluorocarbon in products and services in a particular end use for which EPA's SNAP program has identified other acceptable alternatives that have lower global warming potential.

(e) *Resource.* Refer to EPA's SNAP program website at *https://www.epa.gov/snap* for the list of alternatives found at 40 CFR part 82, subpart G, as well as supplemental tables of alternatives.

23.108 Required Environmental Protection Agency purchasing programs.

In accordance with 23.104(c), contracting officers shall, after meeting statutory purchasing program requirements in 23.107, purchase to the maximum extent practicable products and services that meet EPA purchasing program requirements described in 23.108–1 through 23.108–3.

23.108–1 Water-efficient products.

(a) *Program.* EPA's WaterSense® Program makes it easy to find and select water–efficient products that can save water, energy, and money. WaterSense®-labeled products are backed by independent, third-party certification and meet EPA's specifications for water efficiency and performance.

(b) *Resource.* For additional information on WaterSense® products, see *https://www.epa.gov/watersense/watersense-products.*

23.108–2 Chemically-intensive products.

(a) *Program.* Safer Choice is EPA's label for products that contain safer chemicals. Every chemical, regardless of percentage, in a Safer Choice-certified product is evaluated through EPA's rigorous scientific process and only the safest ingredients are allowed.

(b) *Resource.* For information on Safer Choice-certified products, see *https://www.epa.gov/saferchoice.*

23.108–3 Products and services that are subject to EPA Recommendations of Specifications, Standards, and Ecolabels.

(a) *Program.* The EPA Environmentally Preferable Purchasing (EPP) Program helps Federal agencies identify and procure environmentally preferable products and services to meet zero emissions and other sustainable procurement goals by providing Recommendations of Specifications, Standards, and Ecolabels. The EPP recommendations give preference to multi-attribute or life-cycle based standards and ecolabels that address key environmental and human health impact areas and where product conformance is determined by a

competent third-party certification body.

(b) *Resource.* For additional information on EPA Recommendations of Specifications, Standards, and Ecolabels, see *https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing.*

23.109 Solicitation provisions and contract clauses.

(a) *General.* Insert the clause at 52.223–XX, Sustainable Products and Services, in solicitations and contracts—

(1) Unless—

(i) The requiring activity has provided a written justification that it is not practicable to procure sustainable products and services (see 23.104(a));

(ii) An exception under 23.105 applies; or

(iii) An exemption under 23.106 applies; and

(2) The scope of the written justification, exception, or exemption covers the entirety of the contract action requirements.

(b) *EPA-designated items.* Except for the acquisition of COTS items—

(1) Insert the provision at 52.223–4, Recovered Material Certification, in solicitations that require the delivery or specify the use of EPA-designated items; and

(2) Insert the clause at 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-designated Items, in solicitations and contracts exceeding $150,000 that are for, or specify the use of, EPA-designated items containing recovered materials. If technical personnel advise that estimates can be verified, use the clause with its Alternate I.

(c) *Biobased products in USDA-designated product categories.* (1) Insert the provision at 52.223–1, Biobased Product Certification, in solicitations, other than for acquisitions described at 23.105(d), that—

(i) Require the delivery or specify the use of biobased products in USDA-designated product categories; or

(ii) Include the clause at 52.223–2.

(2) Insert the clause at 52.223–2, Reporting of Biobased Products Under Service and Construction Contracts, in service and construction solicitations and contracts, unless the contract will not involve the use of biobased products in USDA-designated product categories at *https://www.biopreferred.gov* or 7 CFR part 3201.

(d) *Products containing ozone-depleting substances and hydrofluorocarbons.* Except for contracts for supplies that will be delivered outside the United States and its outlying areas, or contracts for services that will be performed outside the United States and its outlying areas, insert the following clauses:

(1) 52.223–11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons, in solicitations and contracts for—

(i) Refrigeration equipment (in product or service code (PSC) 4110);

(ii) Air conditioning equipment (PSC 4120);

(iii) Clean agent fire suppression systems/equipment (*e.g.,* installed room flooding systems, portable fire extinguishers, aircraft/tactical vehicle fire/explosion suppression systems) (in PSC 4210);

(iv) Bulk refrigerants and fire suppressants (in PSC 6830);

(v) Solvents, dusters, freezing compounds, mold release agents, and any other miscellaneous chemical specialty that may contain ozone-depleting substances or high global warming potential hydrofluorocarbons (in PSC 6850);

(vi) Corrosion prevention compounds, foam sealants, aerosol mold release agents, and any other preservative or sealing compound that may contain ozone-depleting substances or high global warming potential hydrofluorocarbons (in PSC 8030);

(vii) Fluorocarbon lubricants (primarily aerosols) (in PSC 9150); and

(viii) Any other manufactured end products that may contain or be manufactured with ozone-depleting substances.

(2) 52.223–12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners, in solicitations and contracts that include the maintenance, service, repair, or disposal of—

(i) Refrigeration equipment, such as refrigerators, chillers, or freezers; or

(ii) Air conditioners, including air conditioning systems in motor vehicles.

(3) 52.223–20, Aerosols, in solicitations and contracts—

(i) For products that may contain high global warming potential hydrofluorocarbons as a propellant, or as a solvent; or

(ii) That involve maintenance or repair of electronic or mechanical devices.

(4) 52.223–21, Foams, in solicitations and contracts for—

(i) Products that may contain high global warming potential hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons as a foam blowing agent, such as building foam insulation or appliance foam insulation; or

(ii) Construction of buildings or facilities.

■ 34. Revise subpart 23.2 to read as follows:

Subpart 23.2—Energy Savings Performance Contracts

Sec.

Subpart 23.2—Energy Savings Performance Contracts

23.200 Scope.

(a) This subpart prescribes policies and procedures for using an energy savings performance contract to obtain energy-efficient technologies at Government facilities without Government capital expense.

(b) This subpart applies to acquisitions in the United States and its outlying areas. Agencies conducting acquisitions outside of these areas must use their best efforts to comply with this subpart.

23.201 Authorities.

This subpart implements the National Energy Conservation Policy Act (42 U.S.C. 8287).

23.202 Policy.

(a) Agencies should make maximum use of the authority provided in the National Energy Conservation Policy Act (42 U.S.C. 8287) to use an energy savings performance contract (ESPC), when life-cycle cost-effective to reduce energy use and cost in the agency's facilities and operations.

(b)(1) Under an ESPC, an agency can contract with an energy service company for a period not to exceed 25 years to improve energy efficiency in one or more agency facilities at no direct capital cost to the United States Treasury. The energy service company finances the capital costs of implementing energy conservation measures and receives, in return, a contractually determined share of the cost savings that result.

(2) Except as provided in 10 CFR 436.34, ESPC's are subject to subpart 17.1.

(c) To solicit and award an ESPC, the contracting officer—

(1) Must use the procedures, selection method, and terms and conditions provided in 10 CFR part 436, subpart B; and

(2) May use the ''Qualified List'' of energy service companies established by the Department of Energy and other agencies.

(d) For procedures related to unsolicited proposals for energy savings performance contracts, see 15.603(e).

(e) For more information see *https://energy.gov/eere/femp/energy-savings-performance-contracts-federal-agencies.*

■ 35. Revise the heading for subpart 23.3 to read as follows:

Subpart 23.3—Hazardous Material Identification, Material Safety Data, and Notice of Radioactive Materials

■ 36. Revise section 23.300 to read as follows:

23.300 Scope of subpart.

This subpart prescribes policies and procedures for the following:

(a) Acquiring deliverable items, other than ammunition and explosives, that require the furnishing of data involving hazardous materials. Agencies may prescribe special procedures for ammunition and explosives.

(b) Providing notification of radioactive materials prior to delivery.

■ 37. Revise the heading of section 23.302 to read as follows:

23.302 Hazardous material identification and notice of material safety data.

* * * * *

23.303 [Redesignated as 23.304]

■ 38. Redesignate section 23.303 as section 23.304.

■ 39. Add a new section 23.303 to read as follows:

23.303 Notice of radioactive materials.

(a) The clause at 52.223–7, Notice of Radioactive Materials, requires the contractor to notify the contracting officer prior to delivery of radioactive material.

(b) Upon receipt of the notice, the contracting officer shall notify receiving activities so that appropriate safeguards can be taken.

(c) The clause permits the contracting officer to waive the notification if the contractor states that the notification on prior deliveries is still current. The contracting officer may waive the notice only after consultation with cognizant technical representatives.

(d) The contracting officer is required to specify in the clause at 52.223–7, the number of days in advance of delivery that the contractor will provide notification. The determination of the number of days should be done in coordination with the installation/facility radiation protection officer (RPO). The RPO is responsible for ensuring the proper license, authorization, or permit is obtained prior to receipt of the radioactive material.

■ 40. Revise newly redesignated section 23.304 to read as follows:

23.304 Contract clauses.

(a)(1) The contracting officer shall insert the clause at 52.223–3, Hazardous Material Identification and Material Safety Data, in solicitations and contracts if the contract will require the delivery of hazardous materials as defined in 23.301.

(2) If the contract is awarded by an agency other than the Department of Defense, the contracting officer shall use the clause at 52.223–3 with its Alternate I.

(b) The contracting officer shall insert the clause at 52.223–7, Notice of Radioactive Materials, in solicitations and contracts for supplies that are or that contain—

(1) Radioactive material requiring specific licensing under regulations issued pursuant to the Atomic Energy Act of 1954; or

(2) Radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such supplies include, but are not limited to, aircraft, ammunition, missiles, vehicles, electronic tubes, instrument panel gauges, compasses, and identification markers.

■ 41. Revise subpart 23.4 to read as follows:

Subpart 23.4—Pollution Prevention, Environmental Management Systems, and Waste Reduction

Sec.

Subpart 23.4—Pollution Prevention, Environmental Management Systems, and Waste Reduction

23.400 Scope of subpart.

This subpart prescribes policies and procedures for—

(a) Obtaining information needed for Government compliance with right-to-know laws and pollution prevention requirements;

(b) Contractor compliance with environmental management systems; and

(c) Ensuring waste reduction at Federal facilities.

23.401 Definitions.

As used in this subpart—

Federal agency means an executive agency (see 2.101).

Federal facility means a facility owned or operated by a Federal agency in the customs territory of the United States.

23.402 Authorities.

(a) Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001–11050 (EPCRA).

(b) Pollution Prevention Act of 1990, 42 U.S.C. 13101–13109 (PPA).

(c) Executive Order 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, dated December 8, 2021.

23.403 Emergency planning and toxic release reporting.

(a) Federal facilities are required to comply with the emergency planning and toxic release reporting requirements in EPCRA and PPA.

(b) Pursuant to EPCRA, PPA, and any agency implementing procedures, every contract that provides for performance on a Federal facility shall require the contractor to provide information necessary for the Federal agency to comply with paragraph (a) of this section.

23.404 Environmental management systems.

Agencies may implement an environmental management system (EMS) when it aligns with and supports its agency's mission needs and facilitates implementation and progress toward E.O. 14057 goals. If an agency uses an EMS for contractor operation of Government-owned or -leased facilities or vehicles, and contractor activities affect the agency's environmental management aspects—

(a) EMS requirements shall be included in contracts to ensure proper implementation and execution of EMS roles and responsibilities; and

(b) The contracting officer shall—

(1) Specify the EMS directives with which the contractor must comply; and

(2) Ensure contractor compliance to the same extent as the agency would be required to comply, if the agency operated the facilities or vehicles.

23.405 Waste reduction program.

To support pollution prevention and agency efforts to minimize waste in accordance with E.O. 14057, contracts for contractor operation of Government-owned or -leased facilities or for support services at Government-owned or -operated facilities shall require the contractor to promote cost-effective waste reduction in all operations and facilities covered by the contract.

23.406 Contract clauses.

(a) Insert the clause at 52.223–5, Pollution Prevention and Right-to-Know Information, in solicitations and contracts that provide for performance, in whole or in part, on a Federal facility.

(b) Insert the clause at 52.223–19, Compliance With Environmental Management Systems, in solicitations and contracts for contractor operation of Government-owned or -leased facilities or vehicles located in the United States, if an agency uses an EMS and contractor activities affect aspects of the agency's environmental management. For facilities located outside the United States, the agency head may determine that use of the clause is in the best interest of the Government.

(c) Insert the clause at 52.223–10, Waste Reduction Program, in solicitations and contracts for contractor operation of Government-owned or -leased facilities and all solicitations and contracts for support services at Government-owned or -operated facilities.

Subpart 23.5 [Transferred to Part 26]

■ 42. Transfer subpart 23.5, consisting of sections 23.500 through 23.506, to part 26.

Subpart 23.6 [Removed and Reserved]

■ 43. Remove and reserve subpart 23.6, consisting of sections 23.601 and 23.602.

Subpart 23.7 [Removed and Reserved]

■ 44. Remove and reserve subpart 23.7, consisting of sections 23.700 through 23.705.

■ 45. Revise subpart 23.8 to read as follows:

Subpart 23.8—Greenhouse Gas Emissions

Sec.
23.800 Scope of subpart.
23.801 Policy.
23.802 Solicitation provision.

Subpart 23.8—Greenhouse Gas Emissions

23.800 Scope of subpart.

This subpart addresses public disclosure of greenhouse gas emissions and reduction goals.

23.801 Policy.

In order to better understand both direct and indirect greenhouse gas emissions that result from Federal activities, offerors that are registered in the System for Award Management (SAM) and received $7.5 million or more in Federal contract awards in the prior Federal fiscal year are required to—

(a) Represent whether they publicly disclose greenhouse gas emissions;

(b) Represent whether they publicly disclose a quantitative greenhouse gas emissions reduction goal; and

(c) Provide the website for any such disclosures.

23.802 Solicitation provision.

The provision at 52.223–22, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation, is required only when 52.204–7, System for Award Management, is included in the solicitation (see 52.204–8, Annual Representations and Certifications).

Subpart 23.9 [Removed and Reserved]

■ 46. Remove and reserve subpart 23.9, consisting of sections 23.900 through 23.903.

Subpart 23.10 [Removed and Reserved]

■ 47. Remove and reserve subpart 23.10, consisting of sections 23.1000 through 23.1005.

Subpart 23.11 [Transferred to Part 26]

■ 48. Transfer subpart 23.11, consisting of sections 23.1101 through 23.1105, to part 26.

PART 26—OTHER SOCIOECONOMIC PROGRAMS

Subpart 23.5 [Redesignated as Subpart 26.5]

■ 49. Redesignate newly transferred subpart 23.5, consisting of sections 23.500 through 23.506, as subpart 26.5 as indicated in the table below:

Old section	New section
23.500	26.500
23.501	26.501
23.502	26.502
23.503	26.503
23.504	26.504
23.505	26.506
23.506	26.505

26.504 [Amended]

■ 50. Amend newly redesignated section 26.504 by—

■ a. Removing from the last sentence of paragraph (a)(5) ''postion'' and adding ''position'' in its place; and

■ b. Removing from the end of paragraph (a)(6)(i) ''; or'' and adding a period in its place.

26.505 [Amended]

■ 51. Amend newly redesignated section 26.505 by removing from paragraph (d)(1) ''52.223–6'' and adding ''52.226–XX'' in its place.

26.506 [Amended]

■ 52. Amend newly redesignated section 26.506 by removing ''23.501'' and ''52.223–6'' and adding ''26.501'' and ''52.226–XX'' in their places, respectively.

Subpart 23.11 [Redesignated as Subpart 26.6]

■ 53. Redesignate newly transferred subpart 23.11, consisting of sections 23.1101 through 23.1105, as subpart 26.6 as indicated in the table below:

Old section	New section
23.1101	26.601
23.1102	26.602
23.1103	26.603
23.1104	26.604
23.1105	26.605

26.605 [Amended]

■ 54. Amend newly redesignated section 26.605 by removing ''52.223–18'' and adding ''52.226–YY'' in its place.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.001 [Amended]

■ 55. Amend section 36.001 by—

■ a. Removing from the definition of ''Construction and demolition materials and debris'' the phrase ''means materials and debris generated'' and adding the phrase ''means waste materials and debris generated'' in its place;

■ b. Revising the definition of ''Diverting''; and

■ c. Adding the definition ''Modernization project'' in alphabetical order.

The revision and addition read as follows:

36.001 Definitions.

* * * * *

Diverting means redirecting materials from disposal in landfills or incinerators to recycling or recovery, excluding diversion to waste-to-energy facilities.

Modernization project means a project that includes the comprehensive replacement or restoration of virtually all major systems, interior finishes (such as ceilings, partitions, doors, and floor finishes), and building features.

■ 56. Amend section 36.104 by revising paragraph (b) to read as follows:

36.104 Policy.

* * * * *

(b) Agencies shall implement high-performance sustainable building design, construction, renovation, repair, commissioning, operation and

maintenance, management, and deconstruction practices so as to—

(1) Ensure that—

(i) All new construction and modernization projects greater than 25,000 gross square feet are designed, constructed, and maintained to meet and, wherever practicable, exceed Federal sustainable design and operations principles for new construction and modernization projects in accordance with the Council on Environmental Quality's Guiding Principles for Sustainable Federal Buildings and Associated Instructions (Guiding Principles) (available at *https://www.sustainability.gov/pdfs/guiding_principles_for_sustainable_federal_buildings.pdf*); and

(ii) All renovation projects of existing Federal buildings must use, to the greatest extent technically feasible and practicable, Federal sustainable design and operations principles for existing buildings in accordance with the Guiding Principles;

(2) Identify alternatives to renovation that reduce existing assets' deferred maintenance costs;

(3) Ensure that rehabilitation of federally-owned historic buildings utilizes best practices and technologies in retrofitting to promote long-term viability of the buildings; and

(4) Ensure pollution prevention and eliminate waste by diverting at least 50 percent of non-hazardous construction and demolition materials and debris.

36.601–3 [Amended]

■ 57. Amend section 36.601–3 by removing from paragraph (a)(2) ''subpart 23.2'' and adding ''23.107–3'' in its place.

PART 37—SERVICE CONTRACTING

37.102 [Amended]

■ 58. Amend section 37.102 by removing from paragraph (i) ''part 23'' and adding ''subpart 23.1 (see 23.103(c))'' in its place.

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

■ 59. Amend section 39.101 by revising paragraphs (a)(1)(ii) and (iii) to read as follows:

39.101 Policy.

(a)(1) * * *

(ii) The requirements for sustainable products and services (as defined in 2.101) in accordance with subpart 23.1;

(iii) Policies to enable power management and other energy-efficient or environmentally preferable features on all agency electronic products; and

* * * * *

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 60. Amend section 42.302 by—

■ a. Removing from paragraph (a)(66) ''23.5'' and adding ''26.5'' in its place; and

■ b. Revising paragraphs (a)(68)(ii) and (iii).

The revision reads as follows:

42.302 Contract administration functions.

(a) * * *

(68) * * *

(ii) Monitoring contractor compliance with specifications or other contractual requirements requiring the delivery, use, or furnishing of sustainable products and services (as defined in 2.101) in accordance with subpart 23.1. This must occur as part of the quality assurance procedures set forth in part 46; and

(iii) As required in the contract, ensuring that the contractor complies with the reporting requirements relating to recovered material content (see 52.223–9) and biobased products (see 52.223–2) utilized in contract performance.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.204–4 [Removed and Reserved]

■ 61. Remove and reserve section 52.204–4.

■ 62. Amend section 52.204–8 by—

■ a. Revising the date of the provision and paragraph (c)(1)(xvii);

■ b. Removing from the end of paragraph (c)(1)(xix) the parenthesis;

■ c. Removing paragraph (c)(2)(vi); and

■ d. Redesignating paragraphs (c)(2)(vii) and (viii) as paragraphs (c)(2)(vi) and (vii).

The revisions read as follows:

52.204–8 Annual Representations and Certifications.

* * * * *

Annual Representations and Certifications (DATE)

* * * * *

(c)(1) * * *

(xvii) 52.223–1, Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of biobased products in USDA-designated product categories; or include the clause at 52.223–2, Reporting of Biobased Products Under Service and Construction Contracts.

* * * * *

52.211–5 [Amended]

■ 63. Amend section 52.211–5 by removing from the introductory text ''11.304'' and adding ''11.302'' in its place.

■ 64. Amend section 52.212–5 by—

■ a. Revising the date of the clause and paragraphs (b)(39) and (40);

■ b. Removing paragraphs (b)(41) through (45);

■ c. Redesignating paragraphs (b)(46) and (47) as paragraphs (b)(41) and (42);

■ d. Revising newly redesignated paragraphs (b)(41) and (42) and adding paragraph (b)(43);

■ e. Redesignating paragraphs (b)(48) through (55) as paragraphs (b)(44) through (51);

■ f. Adding a new paragraph (b)(52); and

■ g. Redesignating paragraphs (b)(56) through (64) as paragraphs (b)(53) through (61).

The revisions and additions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (DATE)

* * * * *

(b) * * *

__ (39) 52.223–11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (DATE) (42 U.S.C. 7671, *et seq.*).

__ (40) 52.223–12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (DATE) (42 U.S.C. 7671, *et seq.*).

__ (41) 52.223–20, Aerosols (JUN 2016) (42 U.S.C. 7671, *et seq.*).

__ (42) 52.223–21, Foams (JUN 2016) (42 U.S.C. 7671, *et seq.*).

__ (43) 52.223–XX, Sustainable Products and Services (DATE) (E.O. 14057, 7 U.S.C. 8102, 42 U.S.C. 6962, 42 U.S.C. 8259b, and 42 U.S.C. 7671l).

* * * * *

__ (52) 52.226–YY, Encouraging Contractor Policies to Ban Text Messaging While Driving (DATE) (E.O. 13513).

* * * * *

■ 65. Amend section 52.213–4 by—

■ a. Revising the date of the clause;

■ b. Redesignating paragraphs (a)(1)(viii) through (xi) as paragraphs (a)(1)(ix) through (xii) and adding a new paragraph (a)(1)(viii);

■ c. Revising paragraphs (b)(1)(xi) through (xiii);

■ d. Removing paragraph (b)(1)(xiv);

■ e. Redesignating paragraphs (b)(1)(xv) through (xxi) as paragraphs (b)(1)(xiv) through (xx); and

■ f. Revising newly redesignated paragraphs (b)(1)(xiv) and (xv).

The revisions and addition read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (DATE)

(a) * * *

(1) * * *

(viii) 52.223–XX, Sustainable Products and Services (DATE) (E.O. 14057, 7 U.S.C. 8102, 42 U.S.C. 6962, 42 U.S.C. 8259b, and 42 U.S.C. 7671l).

* * * * *

(b) * * *

(1) * * *

(xi) 52.223–5, Pollution Prevention and Right-to-Know Information (MAY 2011) (42 U.S.C. 11001–11050 and 13101–13109) (Applies to services performed on Federal facilities).

(xii) 52.223–11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (DATE) (42 U.S.C. 7671, *et seq.*) (Applies to contracts for products as prescribed at FAR 23.109(d)(1)).

(xiii) 52.223–12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (DATE) (42 U.S.C. 7671, *et seq.*) (Applies to maintenance, service, repair, or disposal of refrigeration equipment and air conditioners).

(xiv) 52.223–20, Aerosols (DATE) (42 U.S.C. 7671, *et seq.*) (Applies to contracts for products that may contain high global warming potential hydrofluorocarbons as a propellant or as a solvent; or contracts for maintenance or repair of electronic or mechanical devices).

(xv) 52.223–21, Foams (DATE) (42 U.S.C. 7671, *et seq.*) (Applies to contracts for products that may contain high global warming potential hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons as a foam blowing agent; or contracts for construction of buildings or facilities.

* * * * *

■ 66. Revise section 52.223–1 to read as follows:

52.223–1 Biobased Product Certification.

As prescribed in 23.109(c)(1), insert the following provision:

Biobased Product Certification (DATE)

As required by the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8101(4)) and the Energy Policy Act of 2005 (7 U.S.C. 8102(a)(2)(F)), the offeror certifies, by signing this offer, that biobased products (within categories of products listed by the United States Department of Agriculture in 7 CFR part 3201, subpart B) to be used or delivered in the performance of the contract, other than biobased products that are not purchased by the offeror as a direct result of this contract, will comply with the applicable specifications or other contractual requirements.

(End of provision)

■ 67. Revise section 52.223–2 to read as follows:

52.223–2 Reporting of Biobased Products Under Service and Construction Contracts.

As prescribed in 23.109(c)(2), insert the following clause:

Reporting of Biobased Products Under Service and Construction Contracts (DATE)

(a) *Definitions.* As used in this clause—

Biobased product means a product determined by the U.S. Department of Agriculture (USDA) to be a commercial product or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials, or that is an intermediate ingredient or feedstock. The term includes, with respect to forestry materials, forest products that meet biobased content requirements, notwithstanding the market share the product holds, the age of the product, or whether the market for the product is new or emerging. (7 U.S.C. 8101) (7 CFR 3201.2).

USDA-designated product category means a generic grouping of products that are or can be made with biobased materials—

(1) That are listed by USDA in a procurement guideline (7 CFR part 3201, subpart B); and

(2) For which USDA has provided purchasing recommendations (available at *https://www.biopreferred.gov*).

(b) The Contractor shall report to *https://www.sam.gov,* with a copy to the Contracting Officer, on the product types and dollar value of any biobased products in USDA-designated product categories purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30; and

(c) Submit this report no later than—

(1) October 31 of each year during contract performance; and

(2) At the end of contract performance.

■ 68. Amend section 52.223–3 by revising the introductory text and the introductory text of Alternate I to read as follows:

52.223–3 Hazardous Material Identification and Material Safety Data.

As prescribed in 23.304(a)(1), insert the following clause:

* * * * *

Alternate I (JUL 1995) As prescribed in 23.304(a)(2), add the following paragraph (i) to the basic clause:

* * * * *

52.223–4 [Amended]

■ 69. Amend section 52.223–4 by removing from the introductory text ''23.406(c)'' and adding ''23.109(b)(1)'' in its place.

■ 70. Amend section 52.223–5 by—

■ a. Revising the introductory text and the date of the clause;

■ b. Removing paragraph (c)(6), Alternate I, and Alternate II.

The revision reads as follows:

52.223–5 Pollution Prevention and Right-to-Know Information.

As prescribed in 23.406(a), insert the following clause:

Pollution Prevention and Right-to-Know Information (DATE)

* * * * *

52.223–6 [Redesignated as 52.226–XX]

■ 71. Redesignate section 52.223–6 as section 52.226–XX.

■ 72. Amend section 52.223–7 by:

■ a. Revising the section heading; and

■ b. Removing from the introductory text ''23.602'' and adding ''23.304(b)'' in its place.

The revision reads as follows:

52.223–7 Notice of Radioactive Materials.

* * * * *

52.223–9 [Amended]

■ 73. Amend section 52.223–9 by removing from the introductory text and the introductory text of Alternate I ''23.406(d)'' and adding ''23.109(b)(2)'' in its place.

■ 74. Amend section 52.223–10 by—

■ a. Revising the introductory text and the date of the clause; and

■ b. Removing from paragraph (b) ''3(e) of Executive Order 13423'' and adding ''207 of Executive Order 14057'' in its place.

The revisions read as follows:

52.223–10 Waste Reduction Program.

As prescribed in 23.406(c), insert the following clause:

Waste Reduction Program (DATE)

* * * * *

■ 75. Amend section 52.223–11 by—

■ a. Revising the introductory text and the date of the clause;

■ b. Removing paragraph (c); and

■ c. Redesignating paragraph (d) as paragraph (c).

The revisions read as follows:

52.223–11 Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons.

As prescribed in in 23.109(d)(1), insert the following clause:

Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (DATE)

* * * * *

■ 76. Amend section 52.223–12 by—

■ a. Revising the introductory text, the date of the clause, and paragraph (c)(4);

■ b. Removing paragraph (d); and

■ c. Redesignating paragraph (e) as paragraph (d).

The revisions read as follows:

52.223–12 Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners.

As prescribed in 23.109(d)(2), insert the following clause:

Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (DATE)

* * * * *

(c) * * *

(4) Using reclaimed hydrofluorocarbons to service and repair refrigeration and air conditioning equipment, where feasible.

* * * * *

52.223–13 through 52.223–17 [Removed and Reserved]

■ 76. Remove and reserve sections 52.223–13 through 52.223–17.

52.223–18 [Redesignated as 52.226–YY]

■ 77. Redesignate section 52.223–18 as section 52.226–YY.

52.223–19 [Amended]

■ 78. Amend section 52.223–19 in the introductory text by removing ''23.903'' and adding ''23.406(b)'' in its place.

52.223–20 [Amended]

■ 79. Amend section 52.223–20 in the introductory text by removing ''23.804(a)(3)'' and adding ''23.109(d)(3)'' in its place.

52.223–21 [Amended]

■ 80. Amend section 52.223–21 in the introductory text by removing ''23.804(a)(4)'' and adding ''23.109(d)(4)'' in its place.

52.223–22 [Amended]

■ 81. Amend section 52.223–22 in the introductory text by removing ''23.804(b)'' and adding ''23.802'' in its place.

■ 82. Add section 52.223–XX to read as follows:

52.223–XX Sustainable Products and Services.

As prescribed in 23.109(a), insert the following clause:

Sustainable Products and Services (DATE)

(a) *Definitions.* As used in this clause—

Biobased product means a product determined by the U.S. Department of Agriculture (USDA) to be a commercial product or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials, or that is an intermediate ingredient or feedstock. The term includes, with respect to forestry materials, forest products that meet biobased content requirements, notwithstanding the market share the product holds, the age of the product, or whether the market for the product is new or emerging. (7 U.S.C. 8101) (7 CFR 3201.2).

Recovered material means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process. (42 U.S.C. 6903).

Sustainable products and services means products and services that are subject to and meet the following applicable statutory mandates and directives for purchasing:

(1) *Statutory purchasing programs.*

(i) Products containing recovered material designated by the U.S. Environmental Protection Agency (EPA) under the Comprehensive Procurement Guidelines (42 U.S.C. 6962) (40 CFR part 247) (*https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#products*).

(ii) Energy- and water-efficient products that are ENERGY STAR® certified or Federal Energy Management Program (FEMP)-designated products. (42 U.S.C. 8259b) (10 CFR part 436, subpart C) (*https://www.energy.gov/eere/femp/search-energy-efficient-products*) and (*https://www.energystar.gov/products?s=mega*).

(iii) Biobased products meeting the content requirement of the USDA under the BioPreferred® program. (7 U.S.C. 8102) (7 CFR part 3201) (*https://www.biopreferred.gov*).

(iv) Acceptable chemicals, products, and manufacturing processes listed under EPA's Significant New Alternatives Policy (SNAP) program, which ensures a safe and smooth transition away from substances that contribute to the depletion of stratospheric ozone. (42 U.S.C. 7671l) (40 CFR part 82, subpart G) (*https://www.epa.gov/snap*).

(2) *Required EPA purchasing programs.*

(i) WaterSense® labeled (water efficient) products and services (*https://www.epa.gov/watersense/watersense-products*).

(ii) Safer Choice-certified products (products that contain safer chemical ingredients) (*https://www.epa.gov/saferchoice/products*).

(iii) Product and services that meet EPA Recommendations of Specifications, Standards, and Ecolabels (*https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing*).

(b) *Requirements.*

(1) Except as provided in paragraph (b)(2) of this clause, in the performance of this contract, the Contractor shall—

(i) Deliver and furnish sustainable products and services for Government use, including use at Government-owned contractor-operated facilities;

(ii) Incorporate sustainable products and services into the construction of a public building or public works; and

(iii) Furnish sustainable products and services for use in performing services under this contract, where the cost of the products is a direct cost to this contract (versus costs which are normally applied to the Contractor's general and administrative expenses or indirect costs).

(2) The contract will identify any products or services that are not subject to this clause.

(3) Sustainable products and services must meet the applicable standards, specifications, or other program requirements at time of quote or offer submission.

(c) *Prioritization.* The Contractor shall prioritize sustainable products and services as follows:

(1) Provide products and services that meet all applicable statutory purchasing program requirements. When both an EPA-designated item and a biobased product in a USDA-designated product category could be used for the same purposes, and both meet the agency's needs, procure the EPA-designated item.

(2) Prioritize multi-attribute sustainable products and services, which are those that meet all applicable statutory purchasing program requirements and one or more required EPA purchasing programs.

(3) If no statutory purchasing program requirements apply, procure sustainable products and services that meet required EPA purchasing program requirements.

(4) Procure products and services that meet required EPA purchasing programs (see paragraph (2) of the definition of ''sustainable products and services'' in paragraph (a) of this clause) unless doing so would conflict with statute, Executive order, or regulation that impose domestic manufacturing and content requirements, such as the Buy American statute (41 U.S.C. chapter 83; see FAR part 25) and the Berry Amendment (10 U.S.C. 4862).

(d) *Resource.* The Green Procurement Compilation (GPC) available at *https://sftool.gov/greenprocurement* provides a comprehensive list of sustainable products and services and sustainable acquisition guidance. The Contractor should review the GPC when determining which purchasing programs apply to a specific product or service.

(End of clause)

■ 83. Amend newly redesignated section 52.226–XX by—

■ a. Revising the introductory text and the date of the clause; and

■ b. Removing from paragraph (d) ''23.506'' and adding ''26.505'' in its place.

The revisions read as follows:

52.226–XX Drug-Free Workplace.

As prescribed in 26.506, insert the following clause:

Drug-Free Workplace (DATE)

* * * * *

■ 84. Amend newly redesignated section 52.226–YY by revising the introductory text and the date of the clause to read as follows:

52.226–YY Encouraging Contractor Policies To Ban Text Messaging While Driving.

As prescribed in 26.605, insert the following clause:

Encouraging Contractor Policies To Ban Text Messaging While Driving (DATE)

* * * * *

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