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Contents

Federal Register

Vol. 88, No. 175

Tuesday, September 12, 2023

Separate Parts In This Issue

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
Vol. 88, No. 175
Tuesday, September 12, 2023

Presidential Documents

Title 3—

The President

Executive Order 14107 of September 6, 2023

Exemption of Paul H. Maurer From Mandatory Separation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 8425(e) of title 5, United States Code, it is hereby ordered as follows:

Section 1. Consistent with section 8425(e) of title 5, United States Code, I hereby determine that the public interest requires that Paul H. Maurer, the current Special Agent in Charge of the George W. Bush Protective Detail in Dallas, Texas, shall be exempted from automatic separation under section 8425(b)(1) of title 5, United States Code. The Director of the United States Secret Service retains all applicable supervisory authority over Special Agent Maurer, including authorities vested in him pursuant to chapter 75 of title 5, United States Code.

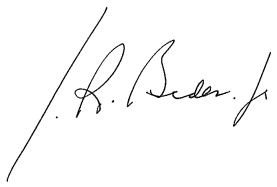
Sec. 2. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
September 6, 2023.

[FR Doc. 2023–19798
Filed 9–11–23; 8:45 am]
Billing code 3395–F3–P

Presidential Documents

Proclamation 10618 of September 7, 2023

National Days of Prayer and Remembrance, 2023

By the President of the United States of America

A Proclamation

Twenty-two years ago—on September 11, 2001—2,977 precious lives were stolen from us in attacks of deliberate evil on our Nation. On the National Days of Prayer and Remembrance, we come together to renew our sacred vow: Never forget. Never forget the parents, children, spouses, friends, and loved ones we lost that day. Never forget the heroes who stepped up to rescue their fellow Americans and help our communities rebuild in the hours—and years—thereafter. And never forget our obligation to honor their memories and service by building a safer and more secure future for all.

To all the families of the victims who have had to endure the absence of a loved one over the last two decades, I know that 22 years is both a lifetime and no time at all. The very memories that help us heal can also open up the hurt and take us back to the moment the grief was raw—to the moment when a loved one and their dreams were stolen from us in an instant. Today, when that grief feels especially great, the First Lady and I hold you close to our hearts.

We also join all those who are mourning the loss of patriots who stepped up when their country needed them most. My mom believed the greatest virtue of all was courage and that someday the bravery that exists in every heart will be summoned. For many, that day was September 11, 2001. Patriotic citizens and first responders ran into the searing flames and crumbling buildings to save their fellow Americans. And in the years that followed, thousands more served and sacrificed to prevent another attack on the United States.

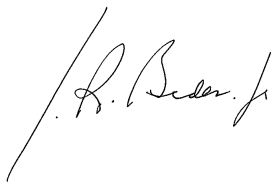
These brave heroes remind us that—through all that has changed over these last two decades—the enduring resolve of the American people has never wavered. What was destroyed in the attacks, we have repaired. What was threatened, we have fortified. We have never ceased in our mission to defend ourselves against those who seek to do us harm and to deliver justice to those responsible for attacks against our people. And during our darkest hour, we regained our light by finding something all too rare—unity.

Today, the charge left for all of us is to find renewal and resolve in remembrance. For it is not enough to only reflect on the souls we lost on September 11th; we must also continue to build a Nation worthy of their highest aspirations—one that remembers, for all our flaws and disagreements, there is nothing we cannot accomplish when we stand together and defend with all our hearts that which makes us unique in the world: our democracy.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 8, 2023, through September 10, 2023, as National Days of Prayer and Remembrance. I ask that the people of the United States honor the victims of September 11, 2001, and their loved ones with prayer, contemplation, memorial services and visits, bells, candlelight vigils, and other activities. I invite people around the world to join. I call on the citizens of our Nation to give thanks for our many freedoms and blessings, and I invite all people of

faith to join me in asking for God's continued guidance, mercy, and protection.

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



[FR Doc. 2023–19799
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Rules and Regulations

Federal Register
Vol. 88, No. 175
Tuesday, September 12, 2023

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2424

Negotiability Proceedings

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The Federal Labor Relations Authority (FLRA) is revising the regulations governing negotiability appeals to better ''expedite proceedings,'' consistent with Congress's direction. The final rule is designed to benefit the FLRA's parties by clarifying various matters and streamlining the adjudication process for negotiability appeals, resulting in more timely decisions.

DATES:

Effective Date: This rule is effective October 12, 2023.

Applicability Date: This part applies to all petitions for review filed on or after October 12, 2023.

FOR FURTHER INFORMATION CONTACT: Thomas Tso, Solicitor, at *ttso@flra.gov* or at (771) 444–5779.

SUPPLEMENTARY INFORMATION: The FLRA proposed revisions to part 2424 of the Authority's Regulations concerning negotiability proceedings. The proposed rule was published in the **Federal Register**, and public comments were solicited on the proposed changes (84 FR 70439) (Dec. 23, 2019). After the initial public comment period closed, the FLRA reopened the comment period for an additional round of public feedback (85 FR 4913) (Jan. 28, 2020). (From this point forward, the printed statements at 84 FR 70439 and 85 FR 4913 are collectively referred to as ''the proposal notices.'') Comments were received from unions, agencies, labor-management practitioners, and other individuals. All timely comments have been considered prior to publishing the final rule, and virtually all comments, including all significant comments, are addressed with specificity below. Changes from the proposed rule are also discussed below, and where those changes relate to specific comments, the connection between the changes and the comments is noted.

Significant Changes

In §§ 2424.22 and 2424.25, the final rule changes the procedures through which an exclusive representative may divide or sever a proposal or provision into distinct parts, in order to seek separate negotiability determinations on particular matters standing alone. Section 2424.10 of the final rule does not remove references to the Collaboration and Alternative Dispute Resolution Program. Section 2424.21 of the final rule does not require an exclusive representative to file a petition for review within sixty days after the expiration of the deadline for an agency to respond to a request for a written allegation concerning the duty the bargain. Section 2424.22 of the final rule does not require an exclusive representative to respond, in a petition for review, to specific claims in an agency's allegation concerning the duty to bargain or an agency head's disapproval. Section 2424.26 of the final rule does not shorten the time limit for filing an agency's reply from fifteen days to ten days. Section 2424.41 of the final rule does not require an exclusive representative to report to a Regional Director an agency's failure to comply with a negotiability decision and order within thirty days after the expiration of the 60-day period for seeking judicial review. Unlike the potentially broad revisions contemplated in the proposal notices, the final rule leaves § 2424.50 of the Authority Regulations (concerning compelling need) mostly unchanged.

Miscellaneous Comments and Responses

Some of the comments responding to the proposal notices did not concern a specific section of the proposed rules. One commenter opposed any changes to existing negotiability procedures because, in the commenter's view, the process could be streamlined by employing sufficient staff. As this comment was not germane to the proposed rule, it did not influence the final rule.

The Office of Personnel Management (OPM) requested that the final rule include a provision requiring that, if a petition for review raises a negotiability dispute concerning a statute that OPM administers, an executive order that OPM administers, or a government-wide regulation that OPM promulgated, then the Authority must formally notify OPM and provide OPM an opportunity to intervene in the case.

Section 7105(i) of the Federal Service Labor-Management Relations Statute (the Statute) states that ''the Authority *may request* from the Director of [OPM] an advisory opinion concerning the proper interpretation of rules, regulations, or policy directives issued by [OPM] in connection with any matter before the Authority.'' 5 U.S.C. 7105(i) (emphasis added). Admittedly, Section 7105(i) does not address the full scope of the matters raised in OPM's comment—such as statutes or executive orders that OPM administers. However, regarding government-wide regulations that OPM issued, Section 7105(i) indicates that Congress did not think it necessary either to require the Authority to seek OPM's views in every case, or to provide OPM an opportunity to intervene in cases. In addition, when Congress thought OPM should have the right to intervene in a particular class of civil-service cases—for example, certain cases before the Merit Systems Protection Board involving the ''interpretation or application of any civil[-]service law, rule, or regulation, under the jurisdiction of [OPM]''—Congress provided for intervention in statutory text. 5 U.S.C. 7701(d)(1). Further, nothing in the Statute, including Section 7105(i), prevents the Authority from requesting an advisory opinion from OPM on statutes or executive orders that OPM administers, where such an opinion would aid the Authority in its decision making. Moreover, § 2429.9 of the Authority's Regulations allows any interested person to petition for the opportunity to present views as amicus curiae in a particular case, and OPM may petition to present its views through that provision. 5 CFR 2429.9.

For these reasons, the final rule does not include a provision concerning notification of, and intervention by, OPM in particular cases.

Sectional Analyses, Comments, and Responses

The regulatory analyses provided in the proposal notices about wording that

has not changed from the proposed rule to the final rule should be understood to apply to the unchanged portions of the final rule. Such previous analyses will not be repeated here, although they continue to apply. Further sectional analyses of the amendments and revisions to part 2424, Negotiability Proceedings—including public comments and responses to those comments—follow:

Part 2424—Negotiability Proceedings

Section 2424.1

None of the public comments addressed § 2424.1. The final rule is the same as the proposed rule.

Section 2424.2

Comments and Responses

One commenter stated that the sentence listing examples of bargaining obligation disputes should say that such disputes include, but may not be limited to, the specified examples. This requested change is unnecessary because the list of examples does not purport to be exhaustive. The same commenter asked that the examples be joined by ''or'' rather than ''and.'' The commenter correctly notes that each example is sufficient, on its own, to establish a bargaining obligation dispute. However, this requested change is unnecessary because each example is part of a group of similar terms, so using ''and'' is appropriate. Therefore, these requested changes were not adopted.

Another commenter requested that the examples of bargaining obligation disputes be expanded from the proposed rule so that the examples still included situations where parties disagree about whether a change to conditions of employment was de minimis. As discussed in connection with § 2424.2(a)(2) below, this requested change is incorporated into the final rule.

A third commenter stated that it does not interpret the changes to the examples in this section to alter the legal definition of the defined terms. To the extent that the commenter means that the changes to examples are intended to better illustrate the existing definitions of these terms, rather than to change the operative definitions of the terms, the commenter is correct. This commenter also objected to adding executive orders to the examples of sources of negotiability disputes. As explained further below in connection with § 2424.2(c), executive orders are not included among the examples of sources of negotiability disputes in the final rule. This commenter also asked that, where government-wide rules or regulations are listed as sources of negotiability disputes, the rule be amended to acknowledge that government-wide rules or regulations can be contrary to statutory law. However, this requested change is unnecessary because it is irrelevant to the existence of a negotiability dispute. Regardless of whether a government-wide rule or regulation is consistent with, or contrary to, a statute, a disagreement between parties about whether a proposal or provision is consistent with a government-wide rule or regulation will establish that a negotiability dispute exists.

Further Analysis

As in the proposed rule, § 2424.2(a) of the final rule clarifies the definition of a ''bargaining obligation dispute.'' However, in response to a comment seeking further examples, § 2424.2(a) of the final rule includes two additional examples, rather than (as in the proposed rule) one additional example. Specifically, § 2424.2(a)(2) of the final rule identifies, as examples of bargaining obligation disputes, disagreements concerning agency claims that bargaining is not required ''because there has not been a change in bargaining-unit employees' conditions of employment,'' *see, e.g., NFFE, IAMAW, Fed. Dist. 1, Fed. Loc. 1998,* 69 FLRA 586, 589 (2016) (analyzing agency's contested claim that it made no changes to conditions of employment as a bargaining obligation dispute) (Member Pizzella concurring in part and dissenting in part on other grounds), as well as claims that bargaining is not required ''because the effect of the change is de minimis,'' *e.g., AFGE, Loc. 2139, Nat'l Council of Field Lab. Locs.,* 61 FLRA 654, 656 (2006) (''The claim that a change in employees' conditions of employment is de minimis is a bargaining obligation dispute, rather than a negotiability dispute.''). Section 2424.2(a)(3) of the final rule is the same as the proposed rule and identifies, as an example of a bargaining obligation dispute, a disagreement about an agency claim that ''[t]he exclusive representative is attempting to bargain at the wrong level of the agency.'' Unlike the proposed rule, the final rule does not revise the text currently located at 5 CFR 2424.2(b).

Section 2424.2(c) of the final rule differs from the proposed rule in three respects. First, whereas § 2424.2(c)(2) of the proposed rule identified, as an example of a negotiability dispute, a disagreement concerning whether a proposal or provision ''[d]irectly affects bargaining-unit employees' condition of employment,'' § 2424.2(c)(2) of the final rule removes the word ''[d]irectly.'' The word ''[d]irectly'' was removed because a negotiability dispute exists when there is a disagreement about whether a proposal or provision has *any* effect on bargaining-unit employees' conditions of employment—not only when there is disagreement about direct effects. *See, e.g., NAGE, Loc. R1–144,* 43 FLRA 1331, 1333 (1992); *id.* at 1335 (agency argued that proposals did not concern conditions of employment of bargaining-unit employees), 1350–51 (Authority found four proposals ''nonnegotiable'' because they did not concern the conditions of employment of bargaining-unit employees). Second, unlike § 2424.2(c) of the proposed rule, § 2424.2(c) of the final rule does not include executive orders among the examples of sources of negotiability disputes. However, the omission of this example does not prohibit parties from arguing that a proposal's or provision's inconsistency with an executive order gives rise to a negotiability dispute. Third, because the executive-order example was removed, § 2424.2(c)(7) of the proposed rule has become § 2424.2(c)(6) of the final rule, and § 2424.2(c)(8)(i) through (v) of the proposed rule have become § 2424.2(c)(7)(i) through (v) of the final rule. The remaining changes to the text currently located at 5 CFR 2424.2(c) are the same in the final rule as in the proposed rule.

Section 2424.2(e) and (f) are the same in the final rule as in the proposed rule.

The proposal notices explained that, although the proposed rule contained revised wording that would ''[e]liminat[e] severance altogether,'' ''the FLRA [wa]s also considering another possible option'' that would not completely eliminate severance. 84 FR at 70439. Unlike the proposed rule, the final rule does not remove the existing definition of ''[s]everance,'' located at 5 CFR 2424.2(h). Because the final rule does not remove the ''[s]everance'' definition, the final rule also does not redesignate the definition of ''[w]ritten allegation concerning the duty to bargain'' as § 2424.2(h)—which is a change from the proposed rule. Under the final rule, the definition of ''[w]ritten allegation concerning the duty to bargain'' maintains its existing location at 5 CFR 2424.2(i).

Section 2424.10

Comments and Responses

Three commenters opposed adding to this section new wording that specifies that Collaboration and Alternative Dispute Resolution (CADR) assistance is provided at the discretion of the

Authority. The final rule does not include the wording that assistance is provided ''in the discretion of the Authority''; however, the Authority disagrees with the commenters' assertions that, as long as the parties agree to CADR assistance, the decision about whether a dispute enters the CADR Program should not be at the Authority's discretion. For example, the Authority may not have resources available to provide CADR assistance every time it is requested. If the Authority declines to grant CADR assistance, that action in no way prevents parties from agreeing to seek alternative dispute resolution services from entities outside the FLRA—such as the Federal Mediation and Conciliation Service.

One commenter appeared to believe that, under the proposed rule, after a petition for review had been filed, the Authority could require the parties to participate in alternative dispute resolution without their consent. To the contrary, CADR assistance will continue to require the consent of the parties.

Another commenter expressed reservations about an addition in the proposed rule that stated that CADR assistance would be provided as resources permit. Because the FLRA is unable to offer any services beyond the capacity of its available resources, this wording remains part of the final rule, as discussed further below.

A third commenter expressed disappointment that the proposed rule removed references to the CADR Program. As explained further below, the final rule does not remove those references.

Further Analysis

Unlike the proposed rule, the heading of § 2424.10 in the final rule will remain the same as the existing heading of 5 CFR 2424.10. In another variance from the proposed rule, § 2424.10 of the final rule is amended to state that parties may contact either the CADR Program or the Office of Case Intake and Publication to seek CADR services. Updated phone numbers are added to the final rule. Further, whereas the proposed rule removed all direct references to CADR, § 2424.10 of the final rule retains all of the direct references to CADR that currently appear in 5 CFR 2424.10. As in the proposed rule, § 2424.10 of the final rule clarifies that CADR representatives will attempt to assist parties to resolve their disputes ''as resources permit.''

Section 2424.11

Comments and Responses

Two commenters supported requiring that requests for allegations concerning the duty to bargain be in writing, and like the proposed rule, the final rule incorporates this requirement.

OPM requested that this section be amended to state that any written agency responses to an exclusive representative's proposals—including agency counterproposals—may contain an unrequested agency allegation concerning the duty the bargain. Because the existing wording does not limit the types of written sources that may contain an unrequested agency allegation concerning the duty to bargain, the requested change is unnecessary. Therefore, the final rule does not adopt that requested change.

OPM also requested that this section be amended to specify that an agency allegation concerning the duty to bargain need contain only an assertion of nonnegotiability and the statutory basis, or other authority, supporting that assertion. OPM contended that the rule should make clear that no further detail is necessary to trigger the time limits for filing a petition for review under § 2424.21. The existing wording at 5 CFR 2424.11 does not specify the level of detail required to trigger the time limits in § 2424.21, except to say that agency allegations must be in writing and must concern the duty to bargain. The FLRA believes that case-by-case adjudication continues to provide a superior method for determining precisely when an agency allegation has triggered the time limits in § 2424.21, and the final rule has not adopted OPM's suggested modification.

Further Analysis

The final rule is the same as the proposed rule.

Section 2424.21

Comments and Responses

Six commenters addressed the change in the proposed rule that, if an agency fails to respond within ten days to an exclusive representative's written request for a written agency allegation concerning the duty to bargain, then the exclusive representative may file a petition, but only within the next sixty days. One union commenter stated that the sixty-day timeline was adequate under these circumstances. Three agency commenters stated that imposing the sixty-day timeline would ensure that negotiability disputes did not linger longer than necessary. OPM requested that this deadline be shortened to thirty days. One union commenter opposed the sixty-day deadline because, according to the commenter, this change rewarded an agency's failure to respond to a written request for an allegation of nonnegotiability by nevertheless imposing a deadline on the exclusive representative for filing a petition for review. As discussed further below, the final rule does not impose this sixty-day deadline because it is not clear that there is currently a problem with exclusive representatives waiting for unnecessarily lengthy periods of time to file petitions after requesting, but not receiving, written agency allegations.

Two commenters expressed concern that an agency does not face adverse consequences for failing to provide a written allegation concerning the duty the bargain within ten days of the exclusive representative's written request for such an allegation. One union commenter suggested that, to provide an adverse consequence for an agency in these circumstances, for each day that the agency's requested allegation is late—that is, beyond the ten-day deadline for providing such an allegation—the exclusive representative should receive an additional day for filing its petition. This suggestion would violate Section 7117(c)(2) of the Statute, which requires a fifteen-day deadline for filing a petition for review after an agency alleges that the duty to bargain does not extend to any matter. 5 U.S.C. 7117(c)(2). Thus, this suggestion has not been adopted. The same union commenter was also concerned that fifteen days would be inadequate for filing a petition that satisfies certain new content requirements that appeared in § 2424.22(d) of the proposed rule. As discussed later in connection with § 2424.22(d), the proposed new content requirements are not part of the final rule, so this concern has been mooted. One commenter suggested that the Authority rewrite the section so that none of the deadlines depend on when the exclusive representative receives, or does not receive, written agency allegations. According to this commenter, the complexity of the section in distinguishing between responses or non-responses to written requests for allegations, solicited or unsolicited allegations, and written versus unwritten allegations creates unnecessary formality that will confuse many negotiators, who are often not lawyers. The commenter suggested that the section state simply that an exclusive representative may file an appeal at any time after the representative is placed on notice that the agency considers a proposal

nonnegotiable, even if the exclusive representative has not requested a written allegation of nonnegotiability. This suggestion would violate Section 7117(c)(2) of the Statute, which requires a fifteen-day deadline for filing a petition for review after an agency alleges that the duty to bargain does not extend to any matter. 5 U.S.C. 7117(c)(2). Accordingly, this suggestion has not been adopted.

One union commenter opposed § 2424.21(b)(1)(i) of the proposed rule, which stated that, if the agency serves a written allegation on the exclusive representative more than ten days after receiving a written request for such allegation, then the petition must be filed within fifteen days of the service of that allegation. This union commenter contended that imposing a fifteen-day deadline on an exclusive representative—even when an agency did not satisfy its obligation to provide a requested allegation within ten days of the request—rewards an agency's violation of its regulatory obligation to furnish requested allegations. However, this commenter did not suggest any alternative regulatory wording, and as discussed in the previous two paragraphs, Section 7117(c)(2) of the Statute requires a fifteen-day deadline for filing a petition for review after an agency alleges that the duty to bargain does not extend to any matter. 5 U.S.C. 7117(c)(2). As discussed further below, with some modifications to the wording, the change identified as § 2424.21(b)(1)(i) of the proposed rule has been adopted as § 2424.21(b)(1) of the final rule.

OPM suggested that § 2424.21(b)(1)(ii) of the proposed rule be omitted from the final rule because it was confusing. As explained further below, this suggestion was accepted.

Further Analysis

Unlike the proposed rule, § 2424.21 of the final rule does not state that if an agency fails to respond to a written request for a written allegation within ten days of the request, then the exclusive representative may file a petition, but only within the next sixty days. Further, to simplify the rule, § 2424.21 of the final rule does not adopt the wording from § 2424.21(b)(1)(ii) of the proposed rule, which described how the Authority would handle a situation where an agency served a written allegation on the exclusive representative more than ten days after receiving a written request for such allegation, but the exclusive representative had already filed a petition. These proposed changes have been deliberately omitted from the final rule. However, § 2424.21 of the final rule adopts the change from the proposed rule that, if the agency serves a written allegation on the exclusive representative more than ten days after receiving a written request for such allegation, and a petition has not yet been filed, then the petition must be filed within fifteen days of the service of that allegation. This change now appears as § 2424.21(b)(1) in the final rule.

Section 2424.22

Comments and Responses

OPM suggested that this section specify that untimely petitions will be dismissed absent a demonstration of good cause. Existing procedures for addressing untimely petitions have proven adequate, so this suggestion has not been adopted.

Many of the comments about this section concerned the proposal to amend severance procedures. The proposal notices described two possible severance-amendment options. Under ''Option 1,'' severance would be eliminated altogether by requiring the exclusive representative to divide matters into separate proposals or provisions when filing the petition, and by precluding severance at later stages of the proceeding. Under ''Option 2,'' severance would be available at only one point in the filing process, and timely severance requests would be automatically granted. However, if severance requests were automatically granted, then the exclusive representative would bear certain burdens to ensure that the record was sufficient to assess whether the severed portions were within the duty to bargain or consistent with law.

One union commenter supported the portion of ''Option 1'' that allowed an exclusive representative to divide matters into distinct proposals and provisions at the petition stage, but the commenter desired another opportunity for severance later in the process. This commenter suggested that the exclusive representative's response to the agency's statement of position should be the later point for severance. This commenter supported the portion of ''Option 2'' that would make severance automatic because this approach would prevent severance from becoming its own point of contention in the proceedings.

Another commenter said that neither severance option would streamline the negotiability process because, even after severance occurred, if only a few words from a larger proposal or provision were allegedly nonnegotiable, then that small portion could cause the entire proposal or provision to be found nonnegotiable. However, the consequence that the commenter identified exists regardless of severance procedures: Any portion of a proposal or provision may render the larger whole deficient. Thus, severance procedures could not completely eliminate that risk. If required to choose between the two options, this commenter preferred ''Option 1.''

A commenter suggested that unions should state, during bargaining, how they would prefer proposals to be severed in the event of a negotiability dispute. The commenter asserted that this approach would highlight which portions of proposals were most important to the union before disputes reached the formal negotiability process. However, regulating the methods that parties use in their bargaining before the formal negotiability process begins is beyond the scope of the rule.

An agency commenter supported both eliminating severance altogether and prohibiting an exclusive representative from dividing single proposals from the bargaining table into multiple parts—to be considered as distinct proposals—in a petition. This suggestion is impractical because, in most cases, an exclusive representative must choose how much of the wording from the parties' negotiations will be set forth in the petition. In some cases, negotiations may involve only a few sentences, but many cases involve multiple pages of text. It would be inefficient for the rule to require an exclusive representative to set forth in the petition all of the text from the bargaining table, even though some parts are entirely agreeable to both parties. Thus, an exclusive representative must apportion the text from the bargaining table into proposals for consideration in a petition.

Another union commenter opposed making any changes to existing severance procedures because, according to this commenter, the Statute requires an informal process for presenting arguments to the Authority. However, the Statute is precise in delimiting the procedures for negotiability appeals, and there is nothing to suggest that the entire process should be informal. Further, it is unclear how maintaining or eliminating severance—which is a specialized concept in negotiability law—would promote informality, even if that were a goal of the negotiability process. This commenter also contended that if severance were eliminated, exclusive representatives would be unable to salvage negotiable portions of longer proposals in which easily isolatable parts were outside the duty to bargain. This criticism is

unwarranted because, under either Option, an exclusive representative could submit an easily isolated portion of disputed text as one proposal, and divide the remainder of the disputed text into separate proposals—provided that all proposals have meaning standing alone. Moreover, as discussed in connection with § 2424.25 of the final rule, a modified severance procedure will be available when the exclusive representative files a response to the agency's statement of position. Another agency commenter preferred ''Option 1'' because the commenter said that ''Option 2'' would generate additional disputes over whether an exclusive representative had satisfied its burdens after receiving automatic severance. However, the existing process generates disputes about whether the Authority should grant severance. The idea for automatically granting severance under ''Option 2'' was premised on a prediction that there would be fewer disputes about whether exclusive representatives had satisfied their burdens after automatic severance than there are disputes at present over whether the Authority should grant severance. The FLRA adheres to its predictive judgment that the number of disputes will decrease if the question of whether to grant severance is not its own point of contention.

After consideration of these severance comments, and as explained further below, the final rule incorporates portions of ''Option 1'' and ''Option 2.'' At the petition stage, the exclusive representative will be responsible for dividing matters into distinct proposals or provisions, if it desires distinct negotiability determinations on particular matters standing alone. However, when the exclusive representative files a response to the agency's statement of position, there will be an opportunity to invoke a modified severance procedure. The ways in which that procedure has been modified are discussed in connection with § 2424.25 of the final rule.

The remaining comments on this section concerned § 2424.22(d) of the proposed rule, which required exclusive representatives to respond—in the petition for review—to any specific claims from an agency's allegation concerning the duty to bargain, or from an agency head's disapproval (the response requirement).

One union commenter opposed the response requirement because the commenter said that the requirement was overly formalistic, and many union representatives are not lawyers.

An agency commenter supported the response requirement on the ground that it would foster a more prompt and focused process for resolving negotiability disputes.

One commenter said the fifteen-day deadline for filing a petition would not be sufficient to respond to all of the specific claims in an agency's allegation concerning the duty to bargain, or an agency head's disapproval.

Another union commenter stated that the response requirement would demand that an exclusive representative prove that a proposal was negotiable, rather than require that an agency prove that it was not.

As explained further below, the final rule does not adopt § 2424.22(d) of the proposed rule, so the expressed concerns about, or support for, the response requirement are moot.

Further Analysis

The heading and § 2424.22(a) are the same in the final rule as in the proposed rule. Like the proposal notices' ''Option 1,'' § 2424.22 of the final rule adds a new paragraph—designated § 2424.22(b)—to allow for the division of matters into proposals or provisions. If an exclusive representative seeks a negotiability determination on particular matters standing alone, then the exclusive representative will be required to divide the matters into separate proposals or provisions when filing the petition. An exclusive representative may no longer ask the Authority for severance at the petition stage of the negotiability proceedings, because the exclusive representative is capable of separating matters into distinct proposals or provisions when submitting a petition to the Authority. However, the final rule also adopts parts of ''Option 2'' from the proposal notices. Specifically, the final rule does not completely eliminate severance from negotiability proceedings, although the exclusive representative may no longer ask the Authority for severance at the petition stage. In accordance with the description of ''Option 2'' in the proposal notices, a new sentence has been added to § 2424.22(b) of the final rule that did not appear in the proposed rule. Specifically, § 2424.22(b) of the final rule states that ''the exclusive representative will have an opportunity to divide proposals or provisions into separate parts when the exclusive representative files a response under § 2424.25.'' In other words, a modified severance procedure will be available at the response stage of the negotiability proceedings.

Section 2424.22(c) of the final rule differs from the proposed rule in several respects. The paragraph identified as § 2424.22(c)(3) in the proposed rule is adopted but redesignated as § 2424.22(c)(2)(i) in the final rule. The paragraph identified as § 2424.22(c)(4) in the proposed rule is adopted but redesignated as § 2424.22(c)(3) in the final rule. The word ''and'' has been removed from the end of this paragraph because an additional paragraph has been added to § 2424.22(c) of the final rule. The paragraph identified as § 2424.22(c)(5) in the proposed rule is adopted but redesignated as § 2424.22(c)(3)(i) in the final rule, and the word ''and'' has been added to the end of this paragraph to introduce the final paragraph of § 2424.22(c) of the final rule.

Section 2424.22 of the proposed rule eliminated the wording currently located at 5 CFR 2424.22(b)(4). Section 2424.22 of the final rule maintains the wording currently located at 5 CFR 2424.22(b)(4), but the wording is redesignated as § 2424.22(c)(4) in the final rule. This wording is further amended so that it requires the petition to include any request for a hearing and the reasons supporting such request, ''with the understanding that the Authority rarely grants such requests.'' This additional proviso has been added to make parties aware that, as a matter of longstanding practice, the Authority very seldom grants hearing requests.

Unlike the proposed rule, § 2424.22 of the final rule does not require the exclusive representative to respond, in its petition, to specific bargaining obligation or negotiability claims that appear in an agency's written allegation concerning the duty to bargain, or an agency head's disapproval—although the exclusive representative is not prohibited from responding to those claims in its petition.

Like the proposed rule, § 2424.22 of the final rule eliminates the paragraph concerning severance that is currently located at 5 CFR 2424.22(c).

Section 2424.23

Comments and Responses

Two agency commenters opposed making the scheduling of a post-petition conference dependent on the Authority's discretion. However, the existing regulation already recognized such discretion by saying that conferences would be scheduled only ''where appropriate.'' 5 CFR 2424.23(a). Although the wording is being changed, the effect is the same. One of these commenters also stated that conferences should occur before the agency files its statement of position. Although the Authority endeavors to schedule conferences before the filing of a statement of position, conferences do

not always occur within that timeframe. The final rule does not guarantee that a conference will occur within a particular timeframe, but the Authority will continue to endeavor to schedule conferences at the earliest practicable date.

A union commenter said that conferences should be held early in the filing process. As stated previously, the Authority will continue to endeavor to do so.

Another agency commenter suggested that post-petition conferences should happen within thirty days or less of the Authority's meeting on the case. The commenter expressed concern that, because conferences may be held many months before a decision is issued, the Authority's Chairman and Members may not retain familiarity with the details of the conference. Because the record of a post-petition conference is created shortly after the conference, and that record is part of the official case file that the Chairman and Members review when deciding a negotiability appeal, the commenter's concern is unfounded. Thus, the final rule has not been amended based on this comment.

OPM supported emphasizing the discretionary nature of post-petition conference scheduling, but asked that the regulation be amended further to state that the post-petition conference would generally not occur if no additional clarification was needed regarding the disputed wording. Experience has shown that, in nearly all cases, post-petition conferences meaningfully clarify the disputes in negotiability appeals. Thus, the regulation has not been amended as OPM suggested.

OPM also suggested that the post-petition conferences should occur after the agency files its statement of position. OPM reasoned that the statement of position is the first fully elaborated explanation of the agency's objections to the disputed wording, and if conferences were held after it is filed, then the conference holder would have more material with which to prepare for the conference. Post-petition conferences primarily develop the factual record in a negotiability appeal and reveal whether the parties have a shared understanding of the wording in dispute. If the parties do not already have a shared understanding of the disputed wording, then the conference helps to develop such an understanding, or to precisely identify where the parties' understandings differ.

Although previously expressed legal arguments may shape some of the questions at the conference, the existing process has shown that conference holders are able to elicit sufficient information from agencies during the conference to assess the nature of their objections and tailor the conference accordingly. Further, in cases where the conference occurs before the statement of position is filed, the agency is able to focus its arguments in the statement of position on the actual disputes between the parties, rather than misperceptions about the meaning, operation, and effects of the proposals or provisions. Therefore, the final rule does not aim to schedule post-petition conferences after the filing of the statement of position.

One commenter suggested that the section should not be changed because the existing process has worked very well. The changes adopted in the final rule will more closely align the wording of the regulation and the Authority's actual practices. The essential nature and function of the post-petition conferences will remain the same.

One agency commenter suggested that § 2424.23(e) of the proposed rule should be amended to specify that the Authority may take other appropriate action to aid in its decision making even if a conference is not held. However, the proposed rule already included such wording because it stated that the Authority may hold a hearing or take other appropriate action, in the exercise of its discretion, *instead of, or in addition to,* conducting a post-petition conference. Section 2424.23(e) of the final rule retains this wording.

Further Analysis

The heading of § 2424.23 is the same in the final rule as in the proposed rule. Further, § 2424.23(a) is the same in the final rule as in the proposed rule, with one exception. Whereas § 2424.23(a) of the proposed rule said that ''[t]he FLRA may, in its discretion, schedule a post-petition conference,'' § 2424.23(a) of the final rule says that ''[t]he FLRA will, in its discretion, schedule a post-petition conference.'' The word ''may'' was changed to ''will'' to emphasize that, in the vast majority of cases, a post-petition conference will be scheduled. Further, the phrase ''in its discretion'' already permits the Authority to exercise reasonable judgment in deciding whether to schedule a post-petition conference in a particular case, so the permissive ''may'' was not needed to signal such discretion.

Although the proposed rule did not include changes to § 2424.23(b)(3), the final rule adds the word ''and'' at the end of § 2424.23(b)(3), in order to introduce the following subsection. As this change is merely a grammatically correct way to introduce § 2424.23(b)(4), rather than a substantive change to § 2424.23(b)(3), this technical change falls within the scope of the proposed amendments to § 2424.23(b)(4).

Section 2424.23(b)(4) of the proposed rule was amended, and the amended version appears as § 2424.23(b)(4) of the final rule. Whereas the proposed rule addressed the status of ''any proposal or provision that is also involved in'' another proceeding, the final rule addresses the status of ''any proceedings . . . that are directly related to the negotiability petition.'' Thus, the scope of § 2424.23(b)(4) in the final rule is broader than § 2424.23(b)(4) in the proposed rule. The final rule requires parties to be prepared and authorized to discuss the status of any proceedings directly related to the negotiability petition, and not merely a particular proposal or provision that is involved in both the negotiability process and another proceeding. Further, including the ''directly related'' wording in § 2424.23(b)(4) of the final rule ensures consistency with § 2424.30, which states that the Authority will dismiss a petition for review when the exclusive representative has filed an unfair labor practice (ULP) charge or a grievance alleging a ULP, and the charge or grievance concerns issues ''directly related'' to the petition.

Section 2424.23(b) of the final rule deletes the wording currently located at 5 CFR 2424.23(b)(5) because the subject matter currently addressed at 5 CFR 2424.23(b)(5)—that is, extensions of time limits—is now addressed in § 2424.23(c) of the final rule. Section 2424.23(c) is the same in the final rule as in the proposed rule.

Section 2424.23(d) of the final rule differs from the proposed rule in three respects. First, rather than referring to ''the representative of the FLRA,'' as the proposed rule did, the final rule refers to ''the FLRA representative.'' Second, the final rule clarifies that the FLRA will serve the record of the conference on the parties: the FLRA representative conducting the conference will prepare the record but not serve it. Third, the final rule references ''a written record,'' rather than ''a written statement'' as in the proposed rule. ''Record'' is the term the FLRA uses to refer to this document in communications with parties and in Authority decisions, so the rule's wording was changed to correspond with these other uses.

Section 2424.23(e) is the same in the final rule as in the proposed rule.

Section 2424.24

Comments and Responses

OPM and an agency commenter supported the specificity requirements

of the section as promoting prompt and focused resolutions to disputes.

Further Analysis

The heading and § 2424.24(a) are the same in the final rule as in the proposed rule, with one minor, technical change. The final rule uses the term ''outside the duty to bargain,'' rather than ''not within the duty to bargain,'' to make the sentence read more clearly and to use the same wording that is set forth in § 2424.32(b). The change does not alter the sentence's meaning.

Although the proposed rule included changes to streamline § 2424.24(b), the final rule leaves the wording located at 5 CFR 2424.24(b) unchanged.

Section 2424.24(c)(2) is the same in the final rule as in the proposed rule.

Section 2424.24(c)(3) of the final rule differs from the proposed rule in several respects. The first part of § 2424.24(c)(3) of the final rule—in the portion that begins with the word ''[s]tatus''—is changed from the proposed rule so that this portion of § 2424.24(c)(3) of the final rule mirrors § 2424.23(b)(4) of the final rule. The second part of § 2424.24(c)(3) of the final rule—in the portion that begins with ''and whether''—is the same as in the proposed rule, except the word ''and'' has been deleted after the semicolon.

The paragraph identified as § 2424.24(c)(4) in the proposed rule is adopted but redesignated as § 2424.24(c)(3)(i) in the final rule, and the word ''and'' has been added to the end of this paragraph to introduce the final paragraph of § 2424.24(c) of the final rule. Section 2424.24 of the proposed rule eliminated the wording currently located at 5 CFR 2424.24(c)(4). However, § 2424.24 of the final rule maintains the wording currently located at 5 CFR 2424.24(c)(4), but that wording is supplemented so that it requires the petition to include any request for a hearing and the reasons supporting such request, ''with the understanding that the Authority rarely grants such requests.'' This additional proviso has been added to make parties aware that, as a matter of longstanding practice, the Authority very seldom grants hearing requests.

Like the proposed rule, § 2424.24 of the final rule deletes the paragraph currently located at 5 CFR 2424.24(d), and the final rule also redesignates the paragraph currently located at 5 CFR 2424.24(e) as the new § 2424.24(d) of the final rule.

Section 2424.25

Comments and Responses

OPM suggested that this section specify that untimely responses to statements of position will not be considered, absent a demonstration of good cause. Existing procedures for addressing untimely responses have proven adequate, so this suggestion has not been adopted.

OPM and an agency commenter supported the specificity requirements of this section as promoting prompt and focused resolutions to disputes.

One commenter suggested that the section should clarify that a response is optional if the exclusive representative does not have any additional arguments that were not already set forth in the petition for review. This concern is adequately addressed by § 2424.25(c) of the final rule, which states that the response is limited to matters that the agency raised in its statement of position, and that the exclusive representative is not obligated to repeat arguments that were made in the petition for review.

One commenter specifically supported the idea of granting severance automatically—as suggested in the proposal notices under severance ''Option 2''—and that commenter also advocated making severance available in the response. Except for one point that was already addressed in connection with § 2424.22 about disputes over whether an exclusive representative satisfied its burdens related to automatic severance, commenters did not specifically oppose providing severance automatically when it was sought. To be clear, some commenters did advocate for eliminating severance altogether, but those commenters did not provide specific reasons why—if severance were retained in some fashion—it should not occur automatically when sought.

Further Analysis

Section 2424.25(a) is the same in the final rule as in the proposed rule, except that, instead of the word ''union'' as in the proposed rule, the final rule uses the term ''exclusive representative.''

Although the proposed rule included changes to streamline § 2424.25(b), the final rule leaves the wording located at 5 CFR 2424.25(b) unchanged.

Section 2424.25(c) is the same in the final rule as in the proposed rule, except for the fourth complete sentence in § 2424.25(c). The fourth complete sentence in § 2424.25(c) of the proposed rule stated, ''You must limit your response to the matters that the agency raised in its statement of position.'' By contrast, the fourth complete sentence in § 2424.25(c) of the final rule states, ''With the exception of severance under paragraph (d) of this section, you must limit your response to the matters that the agency raised in its statement of position.'' Thus, this sentence in the final rule allows for the accomplishment of severance in the exclusive representative's response, but otherwise, the response is limited to the matters that the agency raised in its statement of position.

Section 2424.25 of the proposed rule deleted the severance wording currently located at 5 CFR 2424.25(d), and the proposed rule redesignated the wording currently located at 5 CFR 2424.25(e) as the new § 2424.25(d).

As mentioned during the earlier discussion of severance in connection with the content of a petition for review under § 2424.22, the final rule makes a modified severance procedure available under § 2424.25. Thus, unlike the proposed rule, § 2424.25 of the final rule does not completely delete the severance paragraph currently located at 5 CFR 2424.25(d). Instead, the final rule amends that paragraph to allow the exclusive representative, of its own accord, to accomplish severance of a previously submitted proposal or provision. Section 2424.25(d) of the final rule explains how the exclusive representative may accomplish severance of its own accord and describes how the exclusive representative's accomplishment of severance must aim to satisfy the exclusive representative's burdens under §§ 2424.25(c) and 2424.32. This approach is consistent with severance ''Option 2,'' as described in the proposal notices in connection with § 2424.22 of the proposed rule.

Under § 2424.25(d) of the final rule, the exclusive representative must identify the proposal or provision that the exclusive representative is severing and set forth the exact wording of the newly severed portion(s). At that point, under the final rule, severance will have been accomplished, creating revised or new proposals or provisions. However, under the final rule, consistent with FLRA case law, the exclusive representative will maintain the burden of establishing why, despite an agency's objections, the newly severed proposals or provisions are within the duty to bargain or not contrary to law. That burden includes explaining how the newly severed proposals or provisions operate and stand alone with independent meaning. Moreover, under the final rule, if the exclusive representative accomplishes severance of its own accord but fails to meet the associated burdens under § 2424.25(c) or § 2424.32, then the Authority would dismiss the petition as to the newly severed proposals or provisions, based on the exclusive representative's failure

to provide an adequate record for a negotiability determination. *See, e.g., NFFE, Loc. 1655,* 49 FLRA 874, 878–79 (1994) (dismissing petition as to one provision because the record was inadequate for the Authority to make a negotiability determination).

An exclusive representative must be especially attentive to its burdens in connection with accomplishing severance, particularly because a response is ordinarily an exclusive representative's last filing in a negotiability case. Whereas insufficiently explained proposals or provisions in a petition may often be clarified in the record of a later post-petition conference, it is unlikely (although not impossible) that a post-petition conference will occur after the filing of a response.

Section 2424.25(e) of the final rule leaves the wording currently located at 5 CFR 2424.25(e) unchanged.

Section 2424.26

Comments and Responses

OPM suggested that this section specify that untimely replies will not be considered, absent a demonstration of good cause. Existing procedures for addressing untimely replies have proven adequate, so this suggestion has not been adopted.

Two commenters opposed § 2424.26(b) of the proposed rule because that paragraph changed the time limit for filing a reply from fifteen days (under the existing rule) to ten days from the date of receipt of the exclusive representative's response. OPM supported shortening the time limit. As discussed further below, the final rule does not change the time limit.

Further Analysis

The heading and § 2424.26(a) are the same in the final rule as in the proposed rule. Although the proposed rule included changes to § 2424.26(b)—concerning the time limit for filing a reply—the final rule leaves the wording located at 5 CFR 2424.26(b) unchanged.

Section 2424.22(c) is the same in the final rule as in the proposed rule, with one exception. The sixth full sentence of § 2424.22(c) of the final rule ends with the word ''respectively,'' which was not part of the proposed rule.

Section 2424.26 of the proposed rule deleted the severance wording currently located at 5 CFR 2424.26(d), and the proposed rule redesignated the wording currently located at 5 CFR 2424.25(e) as the new § 2424.25(d). The final rule adopts these changes in full.

Section 2424.27

Comments and Responses

One commenter suggested that the paragraph about additional submissions include a time limit for when such submissions must be filed. This paragraph is mostly aimed at addressing unexpected developments that cannot be adequately discussed in the filings that the negotiability regulations already recognize. For that reason, it is unclear what event would trigger a time limit for additional submissions, and the commenter did not suggest any point at which to begin measuring such a time limit. Further, one purpose of this section is to allow filings even late in negotiability proceedings, if sufficiently important developments could affect the Authority's eventual decision and order. A time limit would impede that purpose. Thus, this suggestion has not resulted in changes to the rule.

The proposed rule removed—from the paragraph currently located at the 5 CFR 2424.27—the five-day deadline for filing an additional submission, after receipt of an Authority order granting permission to file that submission. A union commenter opposed this change because the proposed rule did not provide an alternate deadline. As discussed further below, the final rule addresses this issue by requiring that any additional submission be filed simultaneously with the request for permission to file that additional submission.

The same union commenter also characterized this paragraph as creating a process for third parties to submit documents for the Authority's consideration in a negotiability case. That is, the commenter believed that the paragraph concerned filings that are not submitted by the parties to a case. However, the commenter's characterization misconstrued the paragraph. Both before and after revisions, the beginning of the paragraph states that ''[t]he Authority will not consider any submission filed by any party other than those authorized under this part,'' and then the remainder of the paragraph sets forth a process for granting exceptions to that prohibition. 5 CFR 2424.27. The reference to ''any party'' does not permit *non-parties* to employ this procedure to file submissions in a negotiability case. Instead, the reference to ''any party'' emphasizes that *all parties* to negotiability cases are limited to the filings expressly recognized in the negotiability regulations, except for additional submissions that the Authority grants permission to file, in accordance with this section. *See* Processing of Cases; Final Rules, 45 FR 3482, 3485 (Jan. 17, 1980) (explaining that the purpose of the predecessor rule to § 2424.27 was to clarify that ''the Authority will not consider any submissions other than a petition for review, statement of position[,] and response . . . unless such additional submission is requested by the Authority[,] or the Authority in its discretion grants permission to file such submission''). Further, the paragraph states that *a party* must show that extraordinary circumstances justify filing an additional submission, and this burden reinforces that the paragraph does not concern filings by non-parties. A separate rule governing submissions from amicus curiae is located at 5 CFR 2429.9.

Further Analysis

Section 2424.27 of the final rule adopts the heading and all of the wording from the proposed rule, but § 2424.27 of the final rule also includes one additional sentence that comes from the wording currently located at 5 CFR 2424.27. Specifically, the additional sentence in the final rule that was not present in the proposed rule states, ''The additional submission must be filed with the written request.'' The ''written request'' in this additional sentence is a written request to file an additional submission in a negotiability proceeding based on a showing of extraordinary circumstances.

Section 2424.30

Comments and Responses

One union commenter and one agency commenter supported the proposed clarifications in this section about when a grievance alleging a ULP would be considered administratively resolved. These commenters stated that the proposed rule identified all of the circumstances that, to their knowledge, could be considered an administrative resolution that would trigger the thirty-day deadline for an exclusive representative to refile a directly related negotiability petition that was previously dismissed without prejudice. The final rule adopts these clarifications from the proposed rule in full.

The same union commenter suggested that, because this section would now list the possible administrative resolutions for a grievance alleging a ULP, the section should also list the possible administrative resolutions for a ULP charge that prompted the dismissal of a negotiability petition without prejudice. The commenter should refer to the ULP regulations in part 2423 for guidance about potential administrative

resolutions of ULP charges. The final rule does not repeat information from part 2423.

An agency commenter suggested that § 2424.30(b)(2) of the proposed rule state that where an agency makes only bargaining obligation claims, and not negotiability claims, those bargaining obligation claims will not be resolved through the negotiability process. The clarification that this commenter sought is already present in § 2424.2(d)'s definition of a petition for review, so this suggestion has not resulted in changes to § 2424.30 of the final rule.

OPM contended that the Authority should not automatically dismiss petitions for review without prejudice when an exclusive representative has filed a ULP charge or grievance alleging a ULP, and the charge or grievance concerns issues directly related to the petition for review. Instead, OPM advocated a case-by-case assessment of which forum would most expeditiously resolve the parties' disputes. According to OPM, if the Authority determines that the negotiability process would provide the most expeditious resolution, then the Authority should not dismiss a petition for review (without prejudice) while the parties' directly related disputes proceed toward resolution in another forum. When the Authority amended its negotiability regulations to allow for the resolution of bargaining obligation disputes that accompany negotiability disputes, the Authority declined to adopt a commenter's suggestion that, if directly related disputes were filed in multiple forums, then an exclusive representative should have the right to determine which forum proceeds to a resolution first. On that point, the Authority stated that ULP ''proceedings are, in these situations, better suited to resolving the entire dispute.'' Negotiability Proceedings, 63 FR 66405, 66410 (Dec. 2, 1998). The Authority explained further:

> [W]ith the sole exception of compelling need claims . . . all bargaining obligation and negotiability claims may be adjudicated in [a ULP] proceeding. Further, unless excluded from the scope of the parties' grievance procedure by agreement, alleged [ULPs] may be resolved under such negotiated procedures. Thus, with one exception, dismissing petitions for review where [ULP] charges have been filed does not jeopardize a party's ability to obtain adjudication of all claims. In addition, . . . with the exception of orders to bargain, remedies available in [ULP] proceedings under 5 U.S.C. 7118(a)(7) are not . . . available in Authority decisions and orders issued under this part. Accordingly, in situations where an exclusive representative has filed [a ULP] charge, requiring adjudication in a negotiability proceeding would deprive a prevailing exclusive representative of such remedies.

Id. The Authority continues to adhere to those views about resolving cases that involve both bargaining obligation and negotiability disputes. Moreover, a case-by-case assessment would leave the decision-makers in other forums—specifically, the General Counsel and employees of the Office of the General Counsel, as well as arbitrators—uncertain about whether to process disputes before them that are directly related to a negotiability petition for review. For all these reasons, the final rule does not adopt OPM's suggestion.

OPM also suggested that the section state that if an exclusive representative files a ULP charge that solely concerns an allegation of nonnegotiability, then the Authority may choose to process the ULP charge as a negotiability appeal. However, OPM did not provide any legal authority to establish that an exclusive representative's choice of forum may be overruled in that manner, so this suggestion has not been adopted.

Further Analysis

The heading; § 2424.30(a)—including subsections (a)(1), (2), (3), and (4); and § 2424.30(b) and (b)(1) are the same in the final rule as in the proposed rule.

Section 2424.30(b)(2) of the final rule differs from the proposed rule only in its first sentence. This sentence concerns how the Authority will process a petition for review when an exclusive representative has not already filed a related ULP charge or a grievance alleging a ULP, but a bargaining obligation dispute exists in connection with the petition for review. The first sentence of § 2424.30(b)(2) of the proposed rule stated, in pertinent part, ''The exclusive representative may file an unfair labor practice charge pursuant to part 2423 of this subchapter or a grievance under the parties' negotiated grievance procedure concerning the bargaining obligation dispute . . . .'' In contrast, the first sentence of § 2424.30(b)(2) of the final rule states, in pertinent part, ''The exclusive representative may have an opportunity to file an unfair labor practice charge pursuant to part 2423 of this subchapter or a grievance under the parties' negotiated grievance procedure concerning the bargaining obligation dispute . . . .'' This sentence was changed to avoid implying that, if an exclusive representative files a petition that involves a bargaining obligation dispute, then the exclusive representative is entitled to file a ULP charge or grievance alleging a ULP, irrespective of the ordinary legal and contractual conditions that would otherwise apply to these filings. Thus, this portion of the first sentence of § 2424.30(b)(2) of the final rule uses the phrase ''may have an opportunity to file'' to indicate that, if an exclusive representative files a ULP charge or grievance as described in this subsection, then those filings would be subject to all of the otherwise applicable conditions that ordinarily apply to such filings—such as, for example, time limits. The remainder of § 2424.30(b)(2) of the final rule is the same as the proposed rule.

Section 2424.31

Comments and Responses

One commenter disagreed that this section should allow for hearings or other appropriate action to resolve bargaining obligation disputes since this part of the Authority's Regulations concerns negotiability proceedings. The procedures of this section would apply only to bargaining obligation disputes that may be resolved in a negotiability appeal because they are accompanied by negotiability disputes concerning the same proposal or provision.

A union commenter stated that, to the extent that the final rule is intended to preclude the consideration of parties' views about whether a hearing is needed, the commenter opposes that change. The final rule is not intended to preclude the consideration of the parties' views, and none of the changes to the rule expressly state or imply that the Authority will not consider the parties' views. Thus, this concern is misplaced.

Further Analysis

Section 2424.31 is the same in the final rule as in the proposed rule.

Section 2424.32

Comments and Responses

An agency commenter recommended adding the phrase ''or government-wide regulation'' after the phrase ''contrary to law'' in § 2424.32(a) and (b). This change has not been made because this section's use of the phrase ''contrary to law'' is intended to encompass all authorities with the force and effect of law—not merely statutes.

A union commenter opposed the newly created burden under § 2424.32(c) of the proposed rule that each party must give sufficiently detailed explanations to enable the Authority to understand the party's position regarding the meaning, operation, and effects of a proposal or provision. The commenter noted that § 2424.32(c) cautioned that the Authority's decision may be adverse to

a party that fails to satisfy this burden to sufficiently explain, and the commenter contended that an adverse consequence is an unfair penalty for non-lawyer union representatives who may not phrase arguments in the most compelling way. This commenter viewed § 2424.32(c) as an attempt to punish parties that do not provide sophisticated analyses. However, the commenter's criticism is unfounded because the burden in § 2424.32(c) is not concerned with sophistication; it is concerned with sufficiency. Parties must provide the Authority with the details necessary to understand their positions, and parties must be aware that a failure to provide those details may adversely affect them. Section 2424.32(c) essentially warns parties not to expect the Authority to fill in gaps in order to fully develop, or make sense of, incompletely explained positions. Rather, parties must be diligent in setting forth their understandings on all relevant facets of the meaning, operation, and effects of a proposal or provision, as well as the associated legal implications.

Further Analysis

The heading and § 2424.32(a) are the same in the final rule as in the proposed rule.

Section 2424.32(b) of the final rule differs from the proposed rule in one respect. Whereas § 2424.32(b) of the proposed rule stated that ''[t]he agency has the burden of explaining the meaning, operation, and effects of the proposal or provision, if the agency disagrees with the exclusive representative's explanations''; § 2424.32(b) of the final rule states that ''[t]he agency has the burden of explaining the agency's understanding of the meaning, operation, and effects of the proposal or provision, if the agency disagrees with the exclusive representative's explanations.'' Unlike the proposed rule, § 2424.32(b) of the final rule assigns the agency the burden of explaining *the agency's understanding* of meaning, operation, and effects because the agency has this burden of explanation only when the agency disagrees with the explanations that the exclusive representative already provided. In those situations where the agency disagrees with the exclusive representative's explanations, the agency's burden would be to explain the agency's understanding, so as to distinguish that understanding from the exclusive representative's previous explanations.

The wording in § 2424.32(b) of the final rule is consistent with § 2424.24(c)(2)(i) of the final rule, in which agencies are instructed that their statements of positions must include, ''[i]f different from the exclusive representative's position, an explanation of the *meaning the agency attributes* to the proposal or provision and the reasons for disagreeing with the exclusive representative's explanation of meaning.'' 5 CFR 2424.24(c)(2)(i) (emphasis added).

Further, § 2424.32(b) of the final rule is consistent with Authority precedent that when the parties disagree about a proposal's meaning, then the Authority relies on the exclusive representative's explanation of the proposal's meaning to assess whether the proposal is within the duty to bargain, as long as the exclusive representative's explanation comports with the proposal's wording. *E.g., Nat'l Nurses United,* 70 FLRA 306, 307 (2017).

Moreover, § 2424.32(b) of the final rule accounts for cases where an exclusive representative explains a proposal's meaning, but that explanation does not comport with the proposal's wording. Under those circumstances, if the agency disagrees with the exclusive representative's explanation, then the agency bears the burden of explaining (1) the agency's understanding of the proposal and how that understanding comports with the proposal's wording; and (2) why the exclusive representative's alternate explanation does not comport with the proposal's wording.

The remainder of § 2424.32(b) of the final rule is the same as the proposed rule.

Section 2424.32(c); (d)—including subsections (d)(1), (d)(1)(i), (d)(1)(ii), and (d)(2); and (e) of the final rule are the same as the proposed rule.

Section 2424.40

None of the public comments addressed § 2424.40. Section 2424.40 is the same in the final rule as in the proposed rule, except for one phrase that has been added in the final rule. The second complete sentence of § 2424.40(b) in the proposed rule stated, ''If the Authority finds that the duty to bargain does not extend to the proposal, then the Authority will dismiss the petition for review.'' In § 2424.40(b) of the final rule, the second half of this sentence states, ''then the Authority will dismiss the petition for review as to that proposal.'' This change makes § 2424.40(b) of the final rule consistent with § 2424.40(c) of the final rule, which states, ''If the Authority finds that a provision is contrary to law, rule, or regulation, then the Authority will dismiss the petition for review *as to that provision.*'' 5 CFR 2424.40(c) (emphasis added). Further, this change is consistent with the Authority's longstanding practice. *E.g., AFGE, Loc. 3509,* 46 FLRA 1590, 1623–24 (1993) (dismissing petition for review as to seven proposals, but ordering agency to bargain concerning one proposal).

Section 2424.41

None of the public comments addressed § 2424.41. Section 2424.41 is the same in the final rule as in the proposed rule, with one exception. Section 2424.41 of the proposed rule stated that an exclusive representative must report to the appropriate Regional Director an agency's failure to comply with an order issued in accordance with § 2424.40 ''within thirty (30) days following expiration of the 60-day period under 5 U.S.C. 7123(a).'' By contrast, § 2424.41 of the final rule reverts to wording currently located at 5 CFR 2424.41. Thus, § 2424.41 of the final rule states that an exclusive representative must report an agency's failure to comply with an order ''within a reasonable period of time following expiration of the 60-day period under 5 U.S.C. 7123(a).''

Section 2424.50

Comments and Responses

Two union commenters opposed changing the regulatory definition of compelling need in a way that would permit the Authority to find that circumstances other than those listed in the illustrative examples demonstrated the existence of compelling need. These same commenters opposed adding any additional examples to the illustrative criteria.

One commenter provided six additional examples to consider adding to the illustrative criteria.

OPM supported changing the regulatory definition of compelling need in a way that would permit the Authority to find that circumstances other than those listed in the illustrative criteria demonstrated the existence of compelling need.

OPM requested that the section specify that compelling need arguments may be merely one of several grounds for an allegation of nonnegotiability. OPM also asked that the section include additional explanation about what constitutes an agency rule or regulation. These requests were not germane to the definition of a compelling need—which is the subject of this section—so they were not incorporated into the final rule.

OPM suggested removing the reference to ''the accomplishment of the mission or the execution of functions of

the agency or primary national subdivision'' from § 2424.50(a) of the proposed rule. As no rationale was offered for deleting that phrase, it has been retained in the final rule.

One agency commenter argued that all agency rules that have general applicability to the agency's workforce should demonstrate a compelling need. This argument is rejected because it would allow agencies to render topics nonnegotiable merely by issuing a regulation of general applicability. This same commenter argued that executive orders should qualify as ''mandate[s] to the agency or primary national subdivision under law or other outside authority, which implementation is essentially nondiscretionary in nature,'' under § 2424.50(c). Nothing in the rule prevents a party from making that argument in the context of a concrete dispute, but the final rule does not include a blanket statement to that effect.

The Department of Veterans Affairs argued that agency rules and regulations concerning pandemics, epidemics, or other similar emergency situations should be treated as rules and regulations supported by a compelling need, particularly because of the Department's healthcare responsibilities. The Department may advance that argument in the context of a concrete dispute, but the final rule does not include a blanket statement to that effect.

Ultimately, the comments on additional examples to add to § 2424.50 were varied and conflicting. The final rule retains the examples already set forth at 5 CFR 2424.50. However, as explained further below, the final rule does not include any additional examples in the illustrative criteria. In addition, the final rule does not include a phrase that would recognize the Authority's ability to determine that a compelling need exists based on circumstances other than those in the illustrative criteria.

Further Analysis

Section 2424.50 of the final rule differs from the proposed rule in several respects. Like § 2424.50 of the proposed rule, § 2424.50 of the final rule adds to the middle of the introductory paragraph the following wording that does not currently appear in 5 CFR 2424.50: ''the rule or regulation was issued by the agency or any primary national subdivision of the agency, and.'' This additional wording recognizes requirements from Section 7117(a)(3) of the Statute—concerning agency rules or regulations for which a compelling need exists—as part of § 2424.50 of the final rule, which provides a regulatory definition for compelling need.

After the concluding word ''and'' in the additional wording discussed in the preceding paragraph, § 2424.50 of the proposed rule stated that ''the agency demonstrates that either the rule or regulation meets one or more of the following illustrative criteria, or the Authority determines that other circumstances establish a compelling need for the rule or regulation.'' By contrast, after the concluding word ''and'' in the additional wording discussed in the preceding paragraph, § 2424.50 of the final rule states that ''the agency demonstrates that the rule or regulation satisfies one of the following illustrative criteria.'' As such, the final rule departs from the proposed rule in that the final rule does not state that the Authority may determine that ''other circumstances establish a compelling need for the rule or regulation.'' Further, the final rule changes the phrase ''one or more of the following illustrative criteria'' from the proposed rule to simply ''one of the following illustrative criteria.'' This change was made because a compelling need exists if any one of the illustrative criteria is satisfied, and it will ordinarily be unnecessary for the Authority to determine that a rule or regulation satisfies multiple illustrative criteria. However, this change does not preclude the possibility that a rule or regulation could satisfy more than one of the illustrative criteria.

In connection with § 2424.50, the proposal notices solicited suggestions for more illustrative criteria that could be added to the criteria currently located at 5 CFR 2424.50. Although the FLRA appreciates the time that commenters dedicated to suggesting additional illustrative criteria, the final rule does not adopt any additional criteria. Under the final rule, the illustrative criteria currently located at 5 CFR 2424.50(a), (b), and (c) remain unchanged.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the FLRA has determined that this final rule will not have a significant impact on a substantial number of small entities, because this final rule applies only to Federal agencies, Federal employees, and labor organizations representing those employees.

Executive Order 12866, Regulatory Review

The FLRA is an independent regulatory agency and thus is not subject to the requirements of E.O. 12866 (58 FR 51735, Sept. 30, 1993).

Executive Order 13132, Federalism

The FLRA is an independent regulatory agency and thus is not subject to the requirements of E.O. 13132 (64 FR 43255, Aug. 4, 1999).

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The amended regulations contain no additional information collection or record-keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Part 2424

Negotiability Proceedings.

For the reasons stated in the preamble, the Federal Labor Relations Authority amends 5 CFR part 2424 as set forth below:

■ 1. The authority citation for part 2424 continues to read as follows:

Authority: 5 U.S.C. 7134.

■ 2. Revise Section 2424.1 to read as follows:

§ 2424.1 Applicability of this part.

This part applies to all petitions for review filed on or after October 12, 2023.

■ 3. Amend § 2424.2 by revising paragraphs (a), (c)(2) and (c)(3), adding

paragraphs (c)(4) through (7), and revising paragraphs © and (f). The revisions and additions read as follows:

§ 2424.2 Definitions.

In this part, the following definitions apply:

(a) *Bargaining obligation dispute* means a disagreement between an exclusive representative and an agency concerning whether, in the specific circumstances involved in a particular case, the parties are obligated by law to bargain over a proposal that otherwise may be negotiable. Examples of bargaining obligation disputes include disagreements between an exclusive representative and an agency concerning agency claims that:

(1) A proposal concerns a matter that is covered by a collective bargaining agreement;

(2) Bargaining is not required because there has not been a change in bargaining-unit employees' conditions of employment or because the effect of the change is de minimis; and

(3) The exclusive representative is attempting to bargain at the wrong level of the agency.

* * * * *

(c) * * *

(2) Affects bargaining-unit employees' conditions of employment;

(3) Enforces an ''applicable law,'' within the meaning of 5 U.S.C. 7106(a)(2);

(4) Concerns a matter negotiable at the election of the agency under 5 U.S.C. 7106(b)(1);

(5) Constitutes a ''procedure'' or ''appropriate arrangement,'' within the meaning of 5 U.S.C. 7106(b)(2) and (3), respectively;

(6) Is consistent with a Government-wide rule or regulation; and

(7) Is negotiable notwithstanding agency rules or regulations because:

(i) The proposal or provision is consistent with agency rules or regulations for which a compelling need exists under 5 U.S.C. 7117(a)(2);

(ii) The agency rules or regulations violate applicable law, rule, regulation, or appropriate authority outside the agency;

(iii) The agency rules or regulations were not issued by the agency or by any primary national subdivision of the agency;

(iv) The exclusive representative represents an appropriate unit including not less than a majority of the employees in the rule- or regulation-issuing agency or primary national subdivision; or

(v) No compelling need exists for the rules or regulations to bar negotiations.

* * * * *

(e) *Proposal* means any matter offered for bargaining that has not been agreed to by the parties. If a petition for review concerns more than one proposal, then the term ''proposal'' includes each proposal concerned.

(f) *Provision* means any matter that has been disapproved by the agency head on review pursuant to 5 U.S.C. 7114(c). If a petition for review concerns more than one provision, then the term ''provision'' includes each provision concerned.

* * * * *

■ 4. Revise § 2424.10 to read as follows:

§ 2424.10 Collaboration and Alternative Dispute Resolution Program.

Where an exclusive representative and an agency are unable to resolve disputes that arise under this part, they may request assistance from the Collaboration and Alternative Dispute Resolution (CADR) Program or the Office of Case Intake and Publication (CIP), which will refer requests to the CADR Program. Upon request, as resources permit, and as agreed upon by the parties, CADR representatives will attempt to assist the parties to resolve these disputes. Parties seeking information or assistance under this part may call the CADR Office at (771) 444–5802 or the Office of CIP at (771) 444–5805, or write those offices at 1400 K Street NW, Washington, DC 20424–0001. A brief summary of CADR activities is available on the internet at *www.flra.gov.*

■ 5. Revise § 2424.11 to read as follows:

§ 2424.11 Requesting and providing written allegations concerning the duty to bargain.

(a) *General.* An exclusive representative may file a petition for review after receiving a written allegation concerning the duty to bargain from the agency. An exclusive representative also may file a petition for review if it requests in writing that the agency provide it with a written allegation concerning the duty to bargain and the agency does not respond to the request within ten (10) days.

(b) *Agency allegation in response to request.* The agency has an obligation to respond within ten (10) days to a written request by the exclusive representative for a written allegation concerning the duty to bargain. The agency's allegation in response to the exclusive representative's request must be in writing and must be served in accord with § 2424.2(g).

© *Unrequested agency allegation.* If an agency provides an exclusive representative with an unrequested written allegation concerning the duty to bargain, then the exclusive representative may either file a petition for review under this part, or continue to bargain and subsequently request in writing a written allegation concerning the duty to bargain, if necessary. If the exclusive representative chooses to file a petition for review based on an unrequested written allegation concerning the duty to bargain, then the time limit in § 2424.21(a)(1) applies.

■ 6. Amend § 2424.21 by revising paragraph (b) to read as follows:

§ 2424.21 Time limits for filing a petition for review.

* * * * *

(b) If the agency has not served a written allegation on the exclusive representative within ten (10) days after the agency's principal bargaining representative has received a written request for such allegation, as provided in § 2424.11(a), then the petition may be filed at any time, subject to the following:

(1) If the agency serves a written allegation on the exclusive representative more than ten (10) days after receiving a written request for such allegation, then the petition must be filed within fifteen (15) days after the date of service of that allegation on the exclusive representative.

(2) [Reserved]

■ 7. Revise § 2424.22 to read as follows:

§ 2424.22 Exclusive representative's petition for review; purpose; divisions; content; service.

(a) *Purpose.* The purpose of a petition for review is to initiate a negotiability proceeding and provide the agency with notice that the exclusive representative requests a decision from the Authority that a proposal or provision is within the duty to bargain or not contrary to law, respectively.

(b) *Divisions.* The petition will be resolved according to how the exclusive representative divides matters into proposals or provisions. If the exclusive representative seeks a negotiability determination on particular matters standing alone, then the exclusive representative must submit those matters as distinct proposals or provisions. However, the exclusive representative will have an opportunity to divide proposals or provisions into separate parts when the exclusive representative files a response under § 2424.25.

I *Content.* You must file a petition for review on a form that the Authority has provided for that purpose, or in a substantially similar format. You meet this requirement if you file your petition

electronically through use of the eFiling system on the FLRA's website at *www.flra.gov.* That website also provides copies of petition forms. You must date the petition, unless you file it electronically through use of the FLRA's eFiling system. And, regardless of how you file the petition, you must ensure that it includes the following:

(1) The exact wording and explanation of the meaning of the proposal or provision, including an explanation of special terms or phrases, technical language, or other words that are not in common usage, as well as how the proposal or provision is intended to work;

(2) Specific citation to any law, rule, regulation, section of a collective bargaining agreement, or other authority that you rely on in your argument or that you reference in the proposal or provision, and a copy of any such material that the Authority cannot easily access (which you may upload as attachments if you file the petition electronically through use of the FLRA's eFiling system);

(i) An explanation of how the cited law, rule, regulation, section of a collective bargaining agreement, or other authority relates to your argument, proposal, or provision;

(ii) [Reserved]

(3) A statement as to whether the proposal or provision is also involved in an unfair labor practice charge under part 2423 of this subchapter, a grievance pursuant to the parties' negotiated grievance procedure, or an impasse procedure under part 2470 of this subchapter, and whether any other petition for review has been filed concerning a proposal or provision arising from the same bargaining or the same agency head review;

(i) Documents relevant to the statement, including a copy of any related unfair labor practice charge, grievance, request for impasse assistance, or other petition for review; and

(ii) [Reserved]

(4) Any request for a hearing before the Authority and the reasons supporting such request, with the understanding that the Authority rarely grants such requests.

■ 8. Revise § 2424.23 to read as follows:

§ 2424.23 Post-petition conferences; conduct and record.

(a) *Scheduling a post-petition conference.* The FLRA will, in its discretion, schedule a post-petition conference to be conducted by an FLRA representative by telephone, in person, or through other means. Unless the Authority or an FLRA representative directs otherwise, parties must observe all time limits in this part, regardless of whether a post-petition conference is conducted or may be conducted.

(b) *Conduct of conference.* The post-petition conference will be conducted with representatives of the exclusive representative and the agency, who must be prepared and authorized to discuss, clarify, and resolve matters including the following:

(1) The meaning of the proposal or provision in dispute;

(2) Any disputed factual issue(s);

(3) Negotiability dispute objections and bargaining obligation claims regarding the proposal or provision; and

(4) Status of any proceedings—including an unfair labor practice charge under part 2423 of this subchapter, a grievance under the parties' negotiated grievance procedure, or an impasse procedure under part 2470 of this subchapter—that are directly related to the negotiability petition.

€ *Discretionary extension of time limits.* The FLRA representative may, on determining that it will effectuate the purposes of the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101 *et seq.,* and this part, extend the time limits for filing the agency's statement of position and any subsequent filings.

(d) *Record of the conference.* After the post-petition conference has been completed, the FLRA representative will prepare, and the FLRA will serve on the parties, a written record that includes whether the parties agree on the meaning of the disputed proposal or provision, the resolution of any disputed factual issues, and any other appropriate matter€

(e) *Hearings.* Instead of, or in addition to, conducting a post-petition conference, the Authority may exercise its discretion under § 2424.31 to hold a hearing or take other appropriate action to aid in decision making.

■ 9. Revise § 2424.24 to read as follows:

§ 2424.24 Agency's statement of position; purpose; time limits; content; service.

(a) *Purpose.* The purpose of the agency's statement of position is to inform the Authority and the exclusive representative why a proposal or provision is outside the duty to bargain or contrary to law, respectively, and whether the agency disagrees with any facts or arguments made by the exclusive representative in the petition.

(b) *Time limit for filing.* Unless the time limit for filing has been extended pursuant to § 2424.23 or part 2429 of this subchapter, the agency must file its statement of position within thirty (30) days after the date the head of the agency receives a copy of the petition for review.

I *Content.* You must file your statement of position on a form that the Authority has provided for that purpose, or in a substantially similar format. You meet this requirement if you file your statement electronically through use of the eFiling system on the FLRA's website at *www.flra.gov.* That website also provides copies of statement forms. You must date your statement, unless you file it electronically through use of the eFiling system. And, regardless of how you file your statement, your statement must:

(1) Withdraw either:

(i) The allegation that the duty to bargain in good faith does not extend to the exclusive representative's proposal, or

(ii) The disapproval of the provision under 5 U.S.C. 7114(c); or

(2) Set forth in full your position on any matters relevant to the petition that you want the Authority to consider in reaching its decision, including: A statement of the arguments and authorities supporting any bargaining obligation or negotiability claims; any disagreement with claims that the exclusive representative made in the petition for review; specific citation to, and explanation of the relevance of, any law, rule, regulation, section of a collective bargaining agreement, or other authority on which you rely; and a copy of any such material that the Authority may not easily access (which you may upload as attachments if you file your statement of position electronically through use of the FLRA's eFiling system). Your statement of position must also include the following:

(i) If different from the exclusive representative's position, an explanation of the meaning the agency attributes to the proposal or provision and the reasons for disagreeing with the exclusive representative's explanation of meaning;

(ii) If different from the exclusive representative's position, an explanation of how the proposal or provision would work, and the reasons for disagreeing with the exclusive representative's explanation;

(3) Status of any proceedings—including an unfair labor practice charge under part 2423 of this subchapter, a grievance under the parties' negotiated grievance procedure, or an impasse procedure under part 2470 of this subchapter—that are directly related to the negotiability petition, and whether any other petition for review has been filed concerning a

proposal or provision arising from the same bargaining or the same agency head review;

(i) If they have not already been provided with the petition, documents relevant to the status updates, including a copy of any related unfair labor practice charge, grievance, request for impasse assistance, or other petition for review; and

(ii) [Reserved]

(4) Any request for a hearing before the Authority and the reasons supporting such request, with the understanding that the Authority rarely grants such requests.

(d) *Service.* A copy of the agency's statement of position, including all attachments, must be served in accord with § 2424.2(g).

■ 10. Revise paragraphs (a) through (c) of § 2424.25 to read as follows:

§ 2424.25 Response of the exclusive representative; purpose; time limits; content; severance; service.

(a) *Purpose.* The purpose of the exclusive representative's response is to inform the Authority and the agency why, despite the agency's arguments in its statement of position, the proposal or provision is within the duty to bargain or not contrary to law, respectively, and whether the exclusive representative disagrees with any facts or arguments in the agency's statement of position.

(b) *Time limit for filing.* Unless the time limit for filing has been extended pursuant to § 2424.23 or part 2429 of this subchapter, within fifteen (15) days after the date the exclusive representative receives a copy of an agency's statement of position, the exclusive representative must file a response.

© *Content.* You must file your response on a form that the Authority has provided for that purpose, or in a substantially similar format. You meet this requirement if you file your response electronically through use of the eFiling system on the FLRA's website at *www.flra.gov.* That website also provides copies of response forms. With the exception of severance under paragraph (d) of this section, you must limit your response to the matters that the agency raised in its statement of position. You must date your response, unless you file it electronically through use of the FLRA's eFiling system. And, regardless of how you file your response, you must ensure that it identifies any disagreement with the agency's bargaining obligation or negotiability claims. You must: State the arguments and authorities supporting your opposition to any agency argument; include specific citation to, and explanation of the relevance of, any law, rule, regulation, section of a collective bargaining agreement, or other authority on which you rely; and provide a copy of any such material that the Authority may not easily access (which you may upload as attachments if you file your response electronically through use of the FLRA's eFiling system). You are not required to repeat arguments that you made in your petition for review. If not included in the petition for review, then you must state the arguments and authorities supporting your position on all of the relevant bargaining obligation and negotiability matters identified in § 2424.2(a) and (c), respectively.

(d) *Severance.* The exclusive representative may, of its own accord, accomplish the severance of a previously submitted proposal or provision. To accomplish severance, the exclusive representative must identify the proposal or provision that the exclusive representative is severing and set forth the exact wording of the newly severed portion(s). Further, as part of the exclusive representative's explanation and argument about why the newly severed portion(s) are within the duty to bargain or not contrary to law, the exclusive representative must explain how the severed portion(s) stand alone with independent meaning, and how the severed portion(s) would operate. The explanation and argument in support of the severed portion(s) must meet the same requirements for specific information set forth in paragra©(c) of this section, and must satisfy the exclusive representative's burdens under § 2424.32.

* * * * *

■ 11. Revise § 2424.26 to read as follows:

§ 2424.26 Agency's reply; purpose; time limits; content; service.

(a) *Purpose.* The purpose of the agency's reply is to inform the Authority and the exclusive representative whether and why it disagrees with any facts or arguments made for the first time in the exclusive representative's response.

(b) *Time limit for filing.* Unless the time limit for filing has been extended pursuant to § 2424.23 or part 2429 of this subchapter, within fifteen (15) days after the date the agency receives a copy of the exclusive representative's response to the agency's statement of position, the agency may file a reply.

(c) *Content.* You must file your reply on a form that the Authority has provided for that purpose, or in a substantially similar format. You meet this requirement if you file your reply electronically through use of the eFiling system on the FLRA's website at *www.flra.gov.* That website also provides copies of reply forms. You must limit your reply to matters that the exclusive representative raised for the first time in its response. You must date your reply, unless you file it electronically through use of the FLRA's eFiling system. And, regardless of how you file your reply, you must ensure that it identifies any disagreement with the exclusive representative's assertions in its response, including your disagreements with assertions about the bargaining obligation and negotiability matters identified in § 2424.2(a) and (c), respectively. You must: State the arguments and authorities supporting your position; include specific citation to, and explanation of the relevance of, any law, rule, regulation, section of a collective bargaining agreement, or other authority on which you rely; and provide a copy of any such material that the Authority may not easily access (which you may upload as attachments if you file your reply electronically through use of the FLRA's eFiling system). You are not required to repeat arguments that you made in your statement of position.

(d) *Service.* A copy of the agency's reply, including all attachments, must be served in accord with § 2424.2(g).

■ 12. Revise § 2424.27 to read as follows:

§ 2424.27 Additional submissions to the Authority.

The Authority will not consider any submission filed by any party other than those authorized under this part, provided however that the Authority may, in its discretion, grant permission to file an additional submission based on a written request showing extraordinary circumstances by any party. The additional submission must be filed with the written request. All documents filed under this section must be served in accord with § 2424.2(g).

■ 13. Revise § 2424.30 to read as follows:

§ 2424.30 Procedure through which the petition for review will be resolved.

(a) *Exclusive representative has filed related unfair labor practice charge or grievance alleging an unfair labor practice.* Except for proposals or provisions that are the subject of an agency's compelling need claim under 5 U.S.C. 7117(a)(2), the Authority will dismiss a petition for review when an exclusive representative files an unfair labor practice charge pursuant to part 2423 of this subchapter or a grievance alleging an unfair labor practice under

the parties' negotiated grievance procedure, and the charge or grievance concerns issues directly related to the petition for review filed pursuant to this part. The dismissal will be without prejudice to the right of the exclusive representative to refile the petition for review after the unfair labor practice charge or grievance has been resolved administratively, including resolution pursuant to an arbitration award that has become final and binding. No later than thirty (30) days after the date on which the unfair labor practice charge or grievance is resolved administratively, the exclusive representative may refile the petition for review, and the Authority will determine whether resolution of the petition is still required. For purposes of this subsection, a grievance is resolved administratively when:

(1) The exclusive representative withdraws the grievance;

(2) The parties mutually resolve the grievance;

(3) An arbitrator has issued an award resolving the grievance, and the 30-day period under 5 U.S.C. 7122(b) has passed without an exception being filed; or

(4) An arbitrator has issued an award resolving the grievance, a party has filed an exception to that award, and the Authority has issued a decision resolving that exception.

(b) *Exclusive representative has not filed related unfair labor practice charge or grievance alleging an unfair labor practice.* The petition will be processed as follows:

(1) *No bargaining obligation dispute exists.* The Authority will resolve the petition for review under the procedures of this part.

(2) *A bargaining obligation dispute exists.* The exclusive representative may have an opportunity to file an unfair labor practice charge pursuant to part 2423 of this subchapter or a grievance under the parties' negotiated grievance procedure concerning the bargaining obligation dispute, and, where the exclusive representative pursues either of these courses, the Authority will proceed in accord with paragraph (a) of this section. If the exclusive representative does not file an unfair labor practice charge or grievance concerning the bargaining obligation dispute, then the Authority will proceed to resolve all disputes necessary for disposition of the petition unless, in its discretion, the Authority determines that resolving all disputes is not appropriate because, for example, resolution of the bargaining obligation dispute under this part would unduly delay resolution of the negotiability dispute, or the procedures in another, available administrative forum are better suited to resolve the bargaining obligation dispute.

■ 14. Amend § 2424.31 by revising the heading, introductory text, and paragraph © to read as follows:

§ 2424.31 Hearings and other appropriate action.

When necessary to resolve disputed issues of material fact in a negotiability or bargaining obligation dispute, or when it would otherwise aid in decision making, the Authority, or its designated representative, may, in its discretion:

* * * * *

(c) Refer the matter to a hearing pursuant to 5 U.S.C. 7117(b)(3) or (c)(5); or

* * * * *

■ 15. Revise § 2424.32 to read as follows:

§ 2424.32 Parties' responsibilities; failure to raise, support, or respond to arguments; failure to participate in conferences or respond to Authority orders.

(a) *Responsibilities of the exclusive representative.* The exclusive representative has the burden of explaining the meaning, operation, and effects of the proposal or provision; and raising and supporting arguments that the proposal or provision is within the duty to bargain, within the duty to bargain at the agency's election, or not contrary to law, respectively.

(b) *Responsibilities of the agency.* The agency has the burden of explaining the agency's understanding of the meaning, operation, and effects of the proposal or provision, if the agency disagrees with the exclusive representative's explanations; and raising and supporting arguments that the proposal or provision is outside the duty to bargain or contrary to law, respectively.

(c) *Responsibilities to sufficiently explain.* Each party has the burden to give sufficiently detailed explanations to enable the Authority to understand the party's position regarding the meaning, operation, and effects of a proposal or provision. A party's failure to provide such explanations may affect the Authority's decision in a manner that is adverse to the party.

(d) *Failure to raise, support, or respond to arguments.*

(1) Failure to raise and support an argument may, in the Authority's discretion, be deemed a waiver of such argument. Absent good cause:

(i) Arguments that could have been but were not raised by an exclusive representative in the petition for review, or made in its response to the agency's statement of position, may not be made in this or any other proceeding; and

(ii) Arguments that could have been but were not raised by an agency in the statement of position, or made in its reply to the exclusive representative's response, may not be raised in this or any other proceeding.

(2) Failure to respond to an argument or assertion raised by the other party may, in the Authority's discretion, be treated as conceding such argument or assertio©(e) *Failure to participate in conferences; failure to respond to Authority orders.* Where a party fails to participate in a post-petition conference pursuant to § 2424.23, a direction or proceeding under § 2424.31, or otherwise fails to provide timely or responsive information pursuant to an Authority order, including an Authority procedural order directing the correction of technical deficiencies in filing, the Authority may, in addition to those actions set forth in paragraph (d) of this section, take any other action that, in the Authority's discretion, it deems appropriate, including dismissal of the petition for review (with or without prejudice to the exclusive representative's refiling of the petition for review), and granting the petition for review and directing bargaining or rescission of an agency head disapproval under 5 U.S.C. 7114(c) (with or without conditions).

■ 16. Amend § 2424.40 by revising paragraphs (b) and (c) to read as follows:

§ 2424.40 Authority decision and order.

* * * * *

(b) *Cases involving proposals.* If the Authority finds that the duty to bargain extends to the proposal, then the Authority will order the agency to bargain concerning the proposal. If the Authority finds that the duty to bargain does not extend to the proposal, then the Authority will dismiss the petition for review as to that proposal. If the Authority finds that the proposal is bargainable only at the election of the agency, then the Authority will so state. If the Authority resolves a negotiability dispute by finding that a proposal is within the duty to bargain, but there are unresolved bargaining obligation dispute claims, then the Authority will order the agency to bargain in the event its bargaining obligation claims are resolved in a manner that requires bargaining.

(d) *Cases involving provisions.* If the Authority finds that a provision is not contrary to law, rule, or regulation, or is bargainable at the election of the agency, then the Authority will direct the agency to rescind its disapproval of

such provision in whole or in part as appropriate. If the Authority finds that a provision is contrary to law, rule, or regulation, then the Authority will dismiss the petition for review as to that provision.

■ 17. Revise § 2424.41 to read as follows:

§ 2424.41 Compliance.

The exclusive representative may report to the appropriate Regional Director an agency's failure to comply with an order issued in accordance with § 2424.40. The exclusive representative must report such failure within a reasonable period of time following expiration of the 60-day period under 5 U.S.C. 7123(a), which begins on the date of issuance of the Authority order. If, on referral from the Regional Director, the Authority finds such a failure to comply with its order, the Authority will take whatever action it deems necessary to secure compliance with its order, including enforcement under 5 U.S.C. 7123(b).

■ 18. Amend § 2424.50 by revising the introductory text to read as follows:

§ 2424.50 Illustrative criteria.

A compelling need exists for an agency rule or regulation concerning any condition of employment when the rule or regulation was issued by the agency or any primary national subdivision of the agency, and the agency demonstrates that the rule or regulation satisfies one of the following illustrative criteria:

* * * * *

Approved: August 31, 2023.

Rebecca J. Osborne,

Federal Register Liaison, Federal Labor Relations Authority.

[FR Doc. 2023–19269 Filed 9–11–23; 8:45 am]

BILLING CODE 7627–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1389; Airspace Docket No. 23–AGL–19]

RIN 2120–AA66

Amendment of Class E Airspace; Quincy, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Quincy, IL. This action is the result of an airspace review caused by the decommissioning of the Quincy very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operating Network (MON) Program. The name and geographic coordinates of the airport and name of the navigational aid are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, November 30, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E surface airspace and the Class E airspace extending upward from 700 feet above the surface at Quincy Regional Airport-Baldwin Field, Quincy IL, to support instrument flight rule (IFR) operations at this airport.

History

The FAA published an NPRM for Docket No. FAA–2023–1389 in the **Federal Register** (88 FR 41337; June 26, 2023) proposing to amend the Class E airspace at Quincy IL. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E airspace designations are published in paragraphs 6002 and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71:

Modifies the Class E surface airspace to within a 4.3-mile (increased from a 4.2-mile) radius of Quincy Regional Airport-Baldwin Field, Quincy, IL; removes the Quincy VORTAC and associated extension from the airspace legal description; updates the name (previously Quincy Municipal Baldwin Field) and geographic coordinates of the airport to coincide with the FAA's aeronautical database; and replaces the outdated terms ''Notice to Airmen'' with ''Notice to Air Missions'' and ''Airport/Facility Directory'' with ''Chart Supplement'';

And modifies the Class E airspace extending upward from 700 feet above the surface to within a 6.8-mile (decreased from a 7.1-mile) radius of Quincy Regional Airport-Baldwin Field; amends the extension to the southwest to within 4 miles each side (previously 4.4 miles northwest and 7 miles southeast) of the 220° bearing from the Quincy RGNL-Baldwin FLD: RWY 04—Marker Beacon (previously Quincy ILS localizer southwest course) extending from the 6.8-mile (previously 7-mile) radius of the Quincy Regional Airport-Baldwin Field to 9.8 miles (previously 10.4 miles) southwest of the Quincy RGNL-Baldwin FLD: RWY 04—Marker Beacon (previously Quincy LOM/NDB); and updates the name and geographic coordinates of Quincy Regional Airport-

Baldwin Field (previously Quincy Municipal Baldwin Field) and the name of Quincy RGNL-Baldwin FLD: RWY 04—Marker Beacon (previously Quincy LOM/NDB) to coincide with the FAA's aeronautical database.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

AGL IL E2 Quincy, IL [Amended]

Quincy Regional Airport-Baldwin Field, IL
(Lat 39°56′32″ N, long 91°11′33″ W)

Within a 4.3-mile radius of Quincy Regional Airport-Baldwin Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL IL E5 Quincy, IL [Amended]

Quincy Regional Airport-Baldwin Field Airport, IL
(Lat 39°56′32″ N, long 91°11′33″ W)
Quincy RGNL-Baldwin FLD: RWY 04—Marker Beacon
(Lat 39°53′13″ N, long 91°15′13″ W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Quincy Regional Airport-Baldwin Field; and within 4 miles each side of the 220° bearing from the Quincy RGNL-Baldwin FLD: RWY 04—Marker Beacon extending from the 6.8-mile radius of the Quincy Regional Airport-Baldwin Field to 9.8 miles southwest of the Quincy RGNL-Baldwin FLD: RWY 04—Marker Beacon.

* * * * *

Issued in Fort Worth, Texas, on September 6, 2023.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2023–19546 Filed 9–11–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0709]

RIN 1625–AA00

Safety Zone; Atlantic Ocean, Tybee Island, GA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Savannah River during the Air National Guard F–22A Raptor aircraft demonstration event. The safety zone is necessary to ensure the safety of persons, vessels, and the marine environment during the event. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Savannah or a designated representative.

DATES: This rule is effective from 10 a.m. through 1 p.m. on September 13, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0709 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Anthony Harris, Shoreside Compliance, Marine Safety Unit Savannah, U.S. Coast Guard; telephone 912–652–4353, email *Anthony.E.Harris@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The Coast Guard did not receive final details of the event until August 22, 2023, and the event is scheduled to take place on September 13, 2023. The event would begin before the rulemaking process would be completed. Because of the dangers posed by the aerial demonstration of the Air National Guard's F–22A Raptor aircraft, a safety zone is necessary without delay to ensure the safety of persons, vessels, and the marine

environment. It is impracticable and contrary to the public interest to delay this rule because it is necessary to protect personnel, vessels, and the marine environment from potential hazards created by the aerial demonstration of the F–22A Raptor aircraft.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because it is necessary to protect personnel, vessels, and the marine environment from potential hazards created by the aerial demonstration of the F–22A Raptor aircraft.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port (COTP) Savannah has determined that potential hazards associated with the Air National Guard's aerial demonstration of the F–22A Raptor aircraft will be a safety concern for anyone located within Tybee Island and certain waters of the navigable waters of the Savannah River. This rule is necessary to ensure the safety of persons, vessels, and the marine environment during the Air National Guard's F–22A Raptor demonstration event.

IV. Discussion of the Rule

This rule establishes a safety zone on on certain navigable waters located within the line connecting points beginning at 31°59′43.62″ N, 080°49′58.74″ W, thence to 31°58′56.66″ N, 080°50′16.73″ W, thence to 31°59′5.73″ N, 080°50′49.50″ W, thence to 31°59′52.64″ N, 080°50′31.52″ W, and back to the beginning point, during the Air National Guard's aerial demonstration of the F–22A Raptor aircraft. The safety zone will be enforced from 10:00 a.m. to 1:00 p.m. on September 13, 2023. No person or vessel will be permitted to enter, transit through, anchor in, or remain within the safety zone without obtaining permission from the COTP or a designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the COTP or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative. The Coast Guard will provide notice of the safety zone by Broadcast Notice to Mariners, and/or by on-scene designated representatives.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the location, duration, and time-of-day of the safety zone. This rule involves a safety zone that will prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within a limited area on the navigable waters of the Atlantic Ocean during an aerial demonstration lasting three hours. Although persons and vessels may not enter, transit through, anchor in, or remain within the zone without authorization from the COTP or a designated representative, they will be able to safely transit around the safety zone. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within a limited area on the navigable waters of the Atlantic Ocean located within the line connecting points beginning at 31°59′43.62″ N, 080°49′58.74″ W, thence to 31°58′56.66″ N, 080°50′16.73″ W, thence to 31°59′5.73″ N, 080°50′49.50″ W, thence to 31°59′52.64″ N, 080°50′31.52″ W, and back to the beginning point, during Air National Guard's aerial demonstration of the F–22A Raptor aircraft lasting three hours. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T07–0709 to read as follows:

§ 165.T07–0709 Safety Zone; Atlantic Ocean, Tybee Island, GA.

(a) *Location.* The following regulated area is a safety zone: All waters of the Atlantic Ocean, located within the line connecting points beginning at 31°59′43.62″ N, 080°49′58.74″ W, thence to 31°58′56.66″ N, 080°50′16.73″ W, thence to 31°59′5.73″ N, 080°50′49.50″ W, thence to 31°59′52.64″ N, 080°50′31.52″ W, and back to the beginning point. All coordinates are World Geodetic System 1984 (WGS 84).

(b) *Definition.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Savannah (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP or a designated representative.

(2) Persons or vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact COTP by telephone at 912–247–0073, or a designated representative via VHF radio on channel 16, to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Savannah or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Broadcast Notice to Mariners via VHF–FM channel 16, and/or by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from 10 a.m. to 1 p.m. on September 13, 2023.

Dated: September 1, 2023.

Nathaniel L. Robinson,

Commander, U.S. Coast Guard, Captain of the Port Savannah.

[FR Doc. 2023–19559 Filed 9–11–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 2 and 7

[Docket No. PTO–T–2021–0008]

RIN 0651–AD71

Changes To Implement Provisions of the Trademark Modernization Act of 2020; Delay of Effective Date

AGENCY: United States Patent and Trademark Office, U.S. Department of Commerce.

ACTION: Final rule; delay of effective date.

SUMMARY: On November 17, 2021, the United States Patent and Trademark Office (USPTO) published in the **Federal Register** a final rule amending its regulations to implement provisions of the Trademark Modernization Act of 2020 (TMA) concerning new response periods and extensions in the examination of post-registration filings. Those provisions had an effective date of December 1, 2022. On October 13, 2022, the provisions regarding responses and extensions in the examination of post-registration filings were subsequently delayed until October 7, 2023. This notice further delays the provisions that address the post-registration provisions until the spring or early summer of 2024.

DATES: As of September 12, 2023, the effective date for amendatory instructions 29, 30, 31, 33, 34, 37, 38, and 39 amending 37 CFR 2.163, 2.165, 2.176, 2.184, 2.186, 7.6, 7.39, and 7.40, respectively, in the final rule published at 86 FR 64300 on November 17, 2021, delayed at 87 FR 62032 on October 13, 2022, is delayed indefinitely. Also, as of September 12, 2023, the effective date of the amendment to 37 CFR 2.6 in the final rule published at 87 FR 62032 on October 13, 2022, is delayed indefinitely. The USPTO will publish a forthcoming **Federal Register** document announcing a new effective date.

FOR FURTHER INFORMATION CONTACT: Catherine Cain, Office of the Deputy Commissioner for Trademark Examination Policy, at 571–272–8946. You can also send inquiries to *TMFRNotices@uspto.gov*.

SUPPLEMENTARY INFORMATION: On November 17, 2021, the USPTO published in the **Federal Register** a final rule amending the Rules of Practice in Trademark Cases to implement provisions of the TMA. *See* Changes To Implement Provisions of the Trademark Modernization Act of 2020 (86 FR

64300). That final rule was published under Regulatory Identification Number (RIN) 0651–AD55. As part of that final rule, the USPTO set a period of three months for responses to post-registration office actions and provided the option to request a single three-month extension of the deadline, subject to the payment of a fee. The final rule stated that the post-registration changes would go into effect on December 1, 2022.

On October 13, 2022, the USPTO published in the **Federal Register** a final rule delaying the effective date for responses and extensions in the examination of post-registration filings from December 1, 2022, until October 7, 2023. *See* Changes To Implement Provisions of the Trademark Modernization Act of 2020; Delay of Effective Date and Correction (87 FR 62032).

Under this final rule, the USPTO is further delaying the provisions that address post-registration responses and extensions. The USPTO anticipates that these provisions will go into effect sometime in the spring or early summer of 2024.

The USPTO is currently upgrading its internal and public databases, search system, and internal examination systems. These major updates will provide far-reaching efficiencies for both customers and staff. The implementation of the regulatory changes to post-registration responses and extensions cannot be completed until the migration to the new systems is complete. The USPTO anticipates that this will occur in the spring or early summer of 2024. The delay will also provide the public with additional time to prepare for the new response periods. The USPTO will publish a final rule in the **Federal Register** providing the new effective date of the provisions addressing post-registration responses and extensions once it has been determined.

In the final rule published at 86 FR 64300, the cross-reference in 37 CFR 7.40(b) to ''§ 7.39(b) and (c)'' is incorrect. The reference should have been to ''§ 7.39(a) and (b).'' When the USPTO publishes a final rule providing the new effective date of the provisions addressing post-registration responses and extensions, that section will also be corrected.

Rulemaking Requirements

A. Administrative Procedure Act: The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See Perez* v. *Mortg. Bankers Ass'n,* 135 S. Ct. 1199, 1204 (2015) (Interpretive rules ''advise the public of the agency's construction of the statutes and rules which it administers.'' (citation and internal quotation marks omitted)); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (Rule that clarifies interpretation of a statute is interpretive.); *Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (Rules governing an application process are procedural under the Administrative Procedure Act.); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (Rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims.).

Accordingly, prior notice and an opportunity for public comment for the changes in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. *See Perez,* 135 S. Ct. at 1206 (Notice-and-comment procedures are required neither when an agency ''issue[s] an initial interpretive rule'' nor ''when it amends or repeals that interpretive rule.''); *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice-and-comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'' (quoting 5 U.S.C. 553(b)(A))).

Moreover, the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, pursuant to the authority at 5 U.S.C. 553(b)(B), finds good cause to adopt the change to the effective date without prior notice and an opportunity for public comment, as such procedures would be impracticable and contrary to the public interest. The USPTO is currently upgrading its internal and public databases, search system, and internal examination systems. These major updates will provide far-reaching efficiencies for both customers and staff. The implementation of the regulatory changes to post-registration responses and extensions cannot be completed until the migration to the new systems is complete. The USPTO anticipates that this will occur in the spring or early summer of 2024. The delay will also provide the public with additional time to prepare for the new response periods. Delay of this provision to provide prior notice and comment procedures is also impracticable because it would allow the provisions to go into effect before the agency is ready to implement the regulatory changes regarding post-registration responses and extensions.

The Director also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness of this rule. Immediate implementation of the delay in the effective date is in the public interest because it will provide the agency the ability to effectively manage and utilize the resources needed to complete all these initiatives. The delay will also provide the public with additional time to prepare for the new response periods. Delay of this rule to provide for the 30-day delay in effectiveness is impracticable because it would allow the provisions to go into effect before the agency is ready to implement the regulatory changes regarding post-registration responses and extensions.

B. Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a Regulatory Flexibility Act analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. *See* 5 U.S.C. 603.

C. Executive Order 12866 (Regulatory Planning and Review): This rule has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2023–19669 Filed 9–11–23; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0065; FRL–8786–01–OCSPP]

Fluazaindolizine; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fluazaindolizine in or on multiple commodities that are identified and discussed later in this document. E.I. du Pont de Nemours & Company (''DuPont'', now Corteva) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 12, 2023. Objections and requests for hearings must be received on or before November 13, 2023, and must be filed in accordance with the instructions provided in 40 CFR part

178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0065, is available online at *http://www.regulations.gov* or in-person at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title40.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2020–0065 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before November 13, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2020–0065, by one of the following methods:

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

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of April 15, 2020 (85 FR 20910) (FRL–10006–54), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9F8795) by E.I. du Pont de Nemours & Company (''DuPont''), Chestnut Run Plaza, 974 Centre Road, Wilmington, DE 19805. The petition requested to establish tolerances in the 40 CFR part 180 for residues of the nematicide, fluazaindolizine, by measuring the sum of post-hydrolysis residues IN–A5760, IN–F4106, IN–QEK31, IN–QZY47, IN–TMQ01, IN–UJV12, and IN–UNS90 (expressed in parent equivalents) in or on Carrots at 15 parts per million (ppm); Cucurbit Vegetables (Crop Group 9) at 3 ppm; Fruiting Vegetables (Crop Group 8–10) at 3 ppm; Sun dried tomatoes at 30 ppm; Tomato paste at 15 ppm; Tomato puree at 6 ppm; Tomato wet pomace at 6 ppm; Tuberous and Corm Vegetables (Crop Subgroup 1C) at 9 ppm; Dried potato at 30 ppm; Potato process waste at 40 ppm; and establishing tolerances for residues of fluazaindolizine plus its metabolites IN–QEK and IN–F4106 (expressed in parent equivalents), in the animal commodities: Cattle, whole milk at 0.5 ppm; Cattle, fat at 0.09 ppm; Cattle, muscle at 0.02 ppm; Cattle, liver at 0.2 ppm; Cattle, kidney at 0.5 ppm; Goat, whole milk at 0.5 ppm; Goat, fat at 0.09 ppm; Goat, muscle at 0.02 ppm; Goat, liver at 0.2 ppm; Goat, kidney at 0.5 ppm; Hog, whole milk at 0.5 ppm; Hog, fat at 0.09 ppm; Hog, muscle at 0.02 ppm; Hog, liver at 0.2 ppm; Hog, kidney at 0.5 ppm; Horse, whole milk at 0.5 ppm; Horse, fat at 0.09 ppm; Horse, muscle at 0.02 ppm; Horse, liver at 0.2 ppm; Horse, kidney at 0.5 ppm; Sheep, whole milk at 0.5 ppm; Sheep, fat at 0.09 ppm; Sheep, muscle at 0.02 ppm; Sheep, liver at 0.2 ppm; Sheep, kidney at 0.5 ppm. In addition, DuPont proposed pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish indirect or inadvertent tolerances for residues of fluazaindolizine, by measuring the sum of post-hydrolysis residues IN–A5760, IN–F4106, IN–QEK31, IN–QZY47, IN–TMQ01, IN–UJV12, and IN–UNS90 (expressed in parent equivalents) in or on the following commodities: Brassica Head and Stem Vegetables (Crop Group 5–16) at 0.5 ppm; Bulb Vegetables (Crop Group 3–07) at 3 ppm; Cereal Grains (Crop Group 15) at 3 ppm; Corn milled by-products at 6 ppm; Foliage of Legume Vegetables (Crop Group 7), Vines at 8 ppm; Foliage of Legume Vegetables (Crop Group 7), Forage and Straw at 5 ppm; Foliage of Legume Vegetables (Crop Group 7), Hay at 40 ppm; Forage, Fodder and Straw of Cereal Grains (Crop Group 16), Fodder at 4 ppm; Forage, Fodder and Straw of Cereal Grains (Crop Group 16), Forage at 8 ppm; Forage, Fodder and Straw of Cereal Grains (Crop Group 16), Hay at 15 ppm; Forage, Fodder and Straw of Cereal Grains (Crop Group 16), Straw at 10 ppm; Fruiting Vegetables (Crop Group 8–10) at 1 ppm; Grain, Aspirated Fractions at 0.5 ppm; Grass, Forage, Fodder and Hay (Crop Group 17), Forage at 8 ppm; Grass, Forage, Fodder and Hay (Crop Group 17), Hay at 15

ppm; Leafy Vegetables (Crop Group 4–16) at 9 ppm; Leaves of Root and Tuber (Crop Group 2) at 15 ppm; Legume Vegetables (Crop Group 6), Mature Seed at 9 ppm; Legume Vegetables (Crop Group 6), Immature Seed and Pod at 3 ppm; Low Growing Berry (Crop Subgroup 13–07G) at 0.6 ppm; Nongrass Animal Feeds (Forage, Fodder, Straw and Hay) (Crop Group 18), Fodder at 5 ppm; Nongrass Animal Feeds (Forage, Fodder, Straw and Hay) (Crop Group 18), Forage at 8 ppm; Nongrass Animal Feeds (Forage, Fodder, Straw and Hay) (Crop Group 18), Hay at 15 ppm; Nongrass Animal Feeds (Forage, Fodder, Straw and Hay) (Crop Group 18), Straw at 10 ppm; Oilseed (Crop Group 20) at 9 ppm; Oilseed Crop Group 20), Forage and Straw at 5 ppm; Root Vegetables (Crop Subgroup 1A) at 7 ppm; Root Vegetables Except Sugar Beet (Crop Subgroup 1B) at 7 ppm; Soybean Hulls at 20 ppm; Soybean Meal at 20 ppm; Stalk, Stem and Leaf Petiole Vegetables (Crop Group 22) at 3 ppm; Strawberry, Dehydrated at 3 ppm; and Wheat Milled By-Products at 6 ppm. That document referenced a summary of the petition prepared by DuPont (now Corteva), the registrant, which is available in the docket, *http://www.regulations.gov.* A comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

In the **Federal Register** of June 28, 2021 (86 FR 33922) (FRL–10025–08), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), amending the previous NOF dated April 15, 2020 by announcing commodities that were not included in the previous NOF. E.I. du Pont de Nemours & Company (''DuPont''), Chestnut Run Plaza, 974 Centre Road, Wilmington, DE 19805, requests to establish a tolerance in 40 CFR part 180 for residues of the nematicide, fluazaindolizine in or on Poultry, fat at 0.01 ppm; Poultry, meat at 0.01 ppm; Poultry, meat byproducts at 0.01 ppm; and Eggs at 0.01 ppm. In addition, DuPont is proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish indirect or inadvertent tolerances for residues of fluazaindolizine, including its metabolites and their conjugates, expressed as the stoichiometric equivalent of fluazaindolizine, in or on the following commodity: Grass, forage, fodder and hay, group 17, straw at 0.15 ppm.

Based upon review of the data supporting the petition, EPA is establishing tolerances at different levels than petitioned-for and has determined that tolerances for certain petitioned-for commodities are not necessary. The Agency has also modified all of the commodity definitions used and updated certain crop groups. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The main target organs of fluazaindolizine are the urinary tract (rat and mouse), liver and/or gallbladder (mouse and dog), and hematopoietic system (dog). In the mouse carcinogenicity study, the incidence and severity of amyloidosis in specific tissues was increased in both sexes. There was no evidence of increased *in utero* susceptibility in the rat or rabbit developmental studies; however, increased quantitative susceptibility was observed in the rat reproductive toxicity study, based on urinary tract histopathological lesions in F_2 generation weanlings at a lower dose than doses resulting in toxicity in parental animals. Fluazaindolizine is classified as ''Not likely to be carcinogenic to humans'' based on lack of evidence of treatment-related increases in tumors in adequately conducted carcinogenicity studies in rats and mice.

Specific information on the studies received and the nature of the adverse effects caused by fluazaindolizine as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled ''Fluazaindolizine: Human Health Risk Assessment for the New Active Ingredient'' (hereinafter ''Fluazaindolizine Human Health Risk Assessment'') on pages 54–82 in docket ID number EPA–HQ–OPP–2020–0065.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticide-science-and-assessing-pesticide-risks.*

A summary of the toxicological endpoints for fluazaindolizine used for

human risk assessment can be found in the Fluazaindolizine Human Health Risk Assessment.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluazaindolizine, EPA considered exposure under the petitioned-for tolerances. EPA assessed dietary exposures from fluazaindolizine in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

No such effects were identified in the toxicological studies for fluazaindolizine; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the 2003–2008 food consumption data from the U.S. Department of Agriculture's National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA used field-trial based anticipated residue calculations for all crops and assumed 100 percent crop treated (PCT) for all crops.

iii. *Cancer.* Based on the data summarized in the Fluazaindolizine Human Health Risk Assessment, EPA has concluded that fluazaindolizine does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. *Dietary exposure from drinking water.* The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for fluazaindolizine in drinking water. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/models-pesticide-risk-assessment.*

Separate estimated drinking water concentrations (EDWCs) were calculated for the metabolite IN–VM862 and a combination of fluazaindolizine and the other metabolites IN–QEK31, IN–REG72, IN–F4106, and IN–A5760, due to greater toxicological potency of IN–VM862. This combination is referred to as the Fluazaindolizine Drinking Water Total Residue Fraction (FDWTRF). Based on the Pesticide Water Calculator (PWC), EPA used an EDWC of 990 ppb for FDWTRF and 1,300 ppb for IN–VM862 in the chronic dietary risk assessment.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fluazaindolizine is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to fluazaindolizine and any other substances and fluazaindolizine does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fluazaindolizine has a common mechanism of toxicity with other substances.

For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* Increased quantitative susceptibility was observed for fluazaindolizine in the rat 2-generation reproductive study. An increased incidence and severity of urinary tract histopathology was observed in male and female F_2 weanlings at a lower dose than in P and F_1 adult animals. No susceptibility was observed in the rat or rabbit developmental toxicity studies. The metabolite IN–F4106 showed increased prenatal susceptibility (decreased fetal body weight) in the rat developmental toxicity study. However, concern for prenatal susceptibility is low for both parent and metabolite because clear NOAELs and LOAELs were identified for fetal toxicity and endpoints selected for risk assessment are protective of these findings.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for fluazaindolizine is complete.

ii. There is no indication that fluazaindolizine is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional uncertainty factors to account for neurotoxicity.

iii. Increased quantitative susceptibility was observed for fluazaindolizine in the rat two-generation reproductive study. However, as noted above, concern for prenatal susceptibility is low for both parent and metabolite because clear NOAELs and LOAELs were identified for fetal toxicity and endpoints selected for risk assessment are protective of these findings.

iv. There are no residual uncertainties with regard to the exposure assessment

for fluazaindolizine. An acute dietary endpoint was not identified for any population and therefore an assessment of acute dietary risk was not performed. For chronic dietary exposure, risk estimates were partially refined by using average field trial residues and empirical processing factors. Conservative, upper bound estimates were used to assess exposure to fluazaindolizine and its residues of concern through drinking water. Based on these considerations, exposure from food and drinking water will not be underestimated. No residential use patterns are proposed at this time.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, fluazaindolizine is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fluazaindolizine from food and water will utilize 82% of the cPAD for all infants less than one year old, the population group receiving the greatest exposure. There are no residential uses for fluazaindolizine.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate risk takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Short- and intermediate-term adverse effects were identified; however, fluazaindolizine is not registered for any use patterns that would result in either short- or intermediate-term residential exposure. Because there is no short- or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short- or intermediate-term risk), no further assessment of short- or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for fluazaindolizine.

4. *Aggregate cancer risk for U.S. population.* Fluazaindolizine is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fluazaindolizine residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Crops: The petitioner submitted method validation, supplemental method validation, and radiovalidation data for Method No. DuPont-33861 (Rev. 3). This method successfully quantitates two ion transitions for fluazaindolizine via liquid chromatography with tandem mass spectrometry (LC–MS/MS). Method No. DuPont-33861 (Rev. 3) meets HED's criteria for enforcement analytical methods.

Livestock: The petitioner submitted method validation and an independent laboratory validation (ILV) for Method No. DuPont-39226 (Rev. 1). This method successfully quantitates two ion transitions for fluazaindolizine via LC–MS/MS. Method No. DuPont-39226 (Rev. 1) meets HED's criteria for enforcement analytical methods.

The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

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

The Codex has not established any MRLs for fluazaindolizine.

C. Response to Comments

One comment was received on the April 15, 2020, notice of filing that stated in part ''this application should be denied. stop using this chemical.'' Although the Agency recognizes that some individuals believe that pesticides should be banned on agricultural crops, the existing legal framework provided by section 408 of the FFDCA authorizes EPA to establish tolerances when it determines that the tolerance is safe. Upon consideration of the validity, completeness, and reliability of the available data as well as other factors the FFDCA requires EPA to consider, EPA has determined that the fluazaindolizine tolerances are safe. The commenter has provided no information indicating that a safety determination cannot be supported.

D. Revisions to Petitioned-For Tolerances

All tolerance values being established in this rulemaking vary slightly from what the petitioner requested. This is primarily because the petitioner proposed various metabolites as residues of concern for crop and livestock commodities, whereas EPA has concluded that the only residue needed to measure compliance with the tolerance is fluazaindolizine. All raw agricultural commodity (RAC) crop tolerances were calculated according to the Organization for Economic Cooperation and Development (OECD) tolerance calculation procedure. Tolerances in/on processed commodities were calculated by multiplying average processing factors by the mean or highest average field trial (HAFT) value for blended and non-blended commodities, respectively. Commodity definitions are used in accordance with EPA's correct commodity definition guideline.

EPA is not establishing the requested primary crop tolerances for dried potato, potato process waste, tomato paste, and tomato puree, or the requested rotational crop tolerances for aspirated grain fractions (AGF), corn milled byproducts, soybean hulls, soybean meal, dehydrated strawberries, and wheat milled byproducts. Residues of parent fluazaindolizine in these processed commodities are not expected to concentrate to levels above the associated tolerances for the raw agricultural commodities, so processed commodity tolerances are not necessary. The Agency is not establishing the requested primary crop tolerance on tomato wet pomace, as this processed fraction is not considered a significant feed item and a tolerance is not necessary.

The Agency is not establishing the requested rotational crop tolerance for fruiting vegetable crop group 8–10, as residues of parent fluazaindolizine are

expected to be below the limit of quantitation (LOQ) in fruiting vegetables planted as rotational crops and therefore the primary crop tolerance is adequate.

The Agency is not establishing the requested rotational crop tolerances for the straw of commodities in crop groups 7 and 20, as these are not identified as significant feed items and tolerances are not needed. Similarly, EPA is not establishing the requested rotational crop tolerance for the fodder of crop group 18, as this is not a recognized commodity for the crop group.

Finally, EPA is establishing rotational crop tolerances for crop groups 6–22, 7–22, 15–22 and 16–22 rather than the requested rotational crop tolerances on crop groups 6, 7, 15 and 16. EPA proposed changes to these four crop groups on January 10, 2022 (87 FR 1091) (FRL–5031–12–OCSPP) and finalized the revised crop groups as 6–22, 7–22, 15–22 and 16–22 on September 21, 2022 (87 FR 57627) (FRL–5031–13–OCSPP). EPA regulations state ''Once a revised crop group is established, EPA will no longer establish tolerances under the pre-existing crop group.'' 40 CFR 180.40(j)(4). EPA has determined that the residue data support rotational crop tolerances for crop groups 6–22, 7–22, 15–22 and 16–22 based on EPA's practice for evaluating residue data for rotational crop tolerances and because there were no changes to major crops in groups 6–22, 7–22, 15–22 and 16–22. No food commodities are included in the revised crop groups that were not already accounted for in the initial dietary exposure assessment. Therefore, an updated dietary assessment is not needed, and the exposure and risk assessments do not change as a result of the crop group updates.

V. Conclusion

Therefore, tolerances are established for residues of fluazaindolizine, including its metabolites and degradates in or on carrot at 0.05 ppm; cattle, fat at 0.01 ppm; cattle, meat at 0.01 ppm; cattle, meat byproducts at 0.01 ppm; egg at 0.01 ppm; goat, fat at 0.01 ppm; goat, meat at 0.01 ppm; goat, meat byproducts at 0.01 ppm; hog, fat at 0.01 ppm; hog, meat at 0.01 ppm; hog, meat byproducts at 0.01 ppm; horse, fat at 0.01 ppm; horse, meat at 0.01 ppm; horse, meat byproducts at 0.01 ppm; milk at 0.01 ppm; poultry, fat at 0.01 ppm; poultry meat at 0.01 ppm; poultry, meat byproducts at 0.01 ppm; sheep, fat at 0.01 ppm; sheep, meat at 0.01 ppm; sheep, meat byproducts at 0.01 ppm; tomato, dried at 0.4 ppm; vegetable, cucurbit, group 9 at 0.15 ppm; vegetable, fruiting, group 8–10 at 0.07 ppm; and vegetable, tuberous and corm, subgroup 1C at 0.2 ppm.

Additionally, tolerances are established for inadvertent residues of fluazaindolizine, including its metabolites and degradates in or on animal feed, nongrass, group 18, forage at 0.01 ppm; animal feed, nongrass, group 18, hay at 0.015 ppm; animal feed, nongrass, group 18, straw at 0.15 ppm; berry, low growing, subgroup 13–07G at 0.01 ppm; grain, cereal, forage, hay, stover, and straw group 16–22, forage at 0.01 ppm; grain, cereal, forage, hay, stover, and straw group 16–22, hay at 0.015 ppm; grain, cereal, forage, hay, stover, and straw group 16–22, stover at 0.15 ppm; grain, cereal, forage, hay, stover, and straw group 16–22, straw at 0.15 ppm; grain, cereal, group 15–22 at 0.01 ppm; grass, forage, fodder and hay, group 17, forage at 0.01 ppm; grass, forage, fodder, and hay, group 17, hay at 0.015 ppm; grass, forage, fodder and hay, group 17, straw at 0.15 ppm; oilseed group 20 at 0.8 ppm; rapeseed, forage at 0.09 ppm; stalk, stem, and leaf petiole vegetable group 22 at 0.03 ppm; vegetable, *Brassica,* head and stem, group 5–16 at 0.015 ppm; vegetable, bulb, group 3–07 at 0.03 ppm; vegetable, legume, forage and hay, group 7–22, forage at 0.09 ppm; vegetable, legume, forage and hay, group 7–22, hay at 0.4 ppm; vegetable, leafy, group 4–16 at 0.015 ppm; vegetable, leaves of root and tuber, group 2 at 0.015 ppm; vegetable, legume, group 6–22 at 0.8 ppm; and vegetable, root, subgroup 1B at 0.02 ppm.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: September 5, 2023.

Edward Messina,

Director, Office of Pesticide Programs.

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

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

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

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

■ 2. Add § 180.720 to subpart C to read as follows:

§ 180.720 Fluazaindolizine; tolerances for residues.

(a) *General.* Tolerances are established for residues of the nematicide fluazaindolizine, including its metabolites and degradates, in or on the commodities to Table 1 of this section. Compliance with the tolerance levels specified in Table 1 is to be determined by measuring only fluazaindolizine, 8-chloro-*N*-[(2-chloro-5-methoxyphenyl)sulfonyl]-6-(trifluoromethyl)imidazo[1,2-*a*]pyridine-2-carboxamide, in or on the commodity.

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
Carrot	0.05
Cattle, fat	0.01
Cattle, meat	0.01
Cattle, meat byproducts	0.01
Egg	0.01
Goat, fat	0.01
Goat, meat	0.01
Goat, meat byproducts	0.01
Hog, fat	0.01
Hog, meat	0.01
Hog, meat byproducts	0.01
Horse, fat	0.01
Horse, meat	0.01
Horse, meat byproducts	0.01
Milk	0.01
Poultry, fat	0.01
Poultry, meat	0.01
Poultry, meat byproducts	0.01
Sheep, fat	0.01
Sheep, meat	0.01
Sheep, meat byproducts	0.01
Tomato, dried	0.4
Vegetable, cucurbit, group 9	0.15
Vegetable, fruiting, group 8–10	0.07
Vegetable, tuberous and corm, subgroup 1C	0.2

(b)–(c) [Reserved]

(d) *Indirect or inadvertent residues.* Tolerances are established for residues of the nematicide fluazaindolizine, including its metabolites and degradates, in or on the commodities to Table 2 of this section. Compliance with the tolerance levels specified in Table 2 is to be determined by measuring only fluazaindolizine, 8-chloro-*N*-[(2-chloro-5-methoxyphenyl)sulfonyl]-6-(trifluoromethyl)imidazo[1,2-*a*]pyridine-2-carboxamide, in or on the commodity.

TABLE 2 TO PARAGRAPH (d)

Commodity	Parts per million
Animal feed, nongrass, group 18, forage	0.01
Animal feed, nongrass, group 18, hay	0.015
Animal feed, nongrass, group 18, straw	0.15
Berry, low growing, subgroup 13–07G	0.01
Grain, cereal, forage, hay, stover, and straw group 16–22, forage	0.01
Grain, cereal, forage, hay, stover, and straw group 16–22, hay	0.015
Grain, cereal, forage, hay, stover, and straw group 16–22, stover	0.15
Grain, cereal, forage, hay, stover, and straw group 16–22, straw	0.15
Grain, cereal, group 15–22	0.01
Grass, forage, fodder and hay, group 17, forage	0.01
Grass, forage, fodder and hay, group 17, hay	0.015
Grass, forage, fodder and hay, group 17, straw	0.15
Oilseed group 20	0.8
Rapeseed, forage	0.09
Stalk, stem and leaf petiole vegetable group 22	0.03

TABLE 2 TO PARAGRAPH (d)—Continued

Commodity	Parts per million
Vegetable, Brassica, head and stem, group 5–16	0.015
Vegetable, bulb, group 3–07	0.03
Vegetable, legume, forage and hay, group 7–22, forage	0.09
Vegetable, legume, forage and hay, group 7–22, hay	0.4
Vegetable, leafy, group 4–16	0.015
Vegetable, leaves of root and tuber, group 2	0.015
Vegetable, legume, group 6–22	0.8
Vegetable, root, subgroup 1B	0.02

[FR Doc. 2023–19607 Filed 9–11–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 22–239; DA 23–740; FR ID 169282]

Update to Publication for Television Broadcast Station DMA Determinations for Cable and Satellite Carriage

AGENCY: Federal Communications Commission.

ACTION: Technical amendment.

SUMMARY: In this document, the Federal Communications Commission (Commission) conforms a section of its rules to the requirements of the Communications Act, correcting errors that were inadvertently introduced in the prior Report and Order, which revised Commission rules to use the Nielsen Company's Local TV Station Information Report as the successor publication to the annual Station Index Directory and United States Television Household Estimates in determining a television station's designated market area for satellite and cable carriage under the Commission's regulations. This action makes no substantive changes to this regulation.

DATES: This rule is effective October 12, 2023.

FOR FURTHER INFORMATION CONTACT: Contact Kenneth Lewis, *Kenneth.lewis@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2622.

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's Order, in MB Docket No. 22–239; DA 23–740, adopted and released on August 21, 2023. The full text of this document is available for download at *https://docs.fcc.gov/public/attachments/DA-23-740A1.pdf.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* (*mailto:FCC504@fccc.gov*) or call the Consumer and Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

Synopsis

On November 17, 2022, the Commission adopted the *Nielsen Update Report and Order,* MB Docket No. 22–239, FCC 22–89, which revised Commission rules to use the Nielsen Company's Local TV Station Information Report as the successor publication to the annual Station Index Directory and United States Television Household Estimates in determining a television station's designated market area for satellite and cable carriage under the Commission's regulations.[1] Pursuant to that change, § 76.66(e)(3) of the Commission's rules was revised, and the time periods mentioned in that rule were brought up to date.[2] These updates were intended to reflect the upcoming statutorily-established carriage election cycle periods,[3] but contained errors.

Technical Correction

Section 47 U.S.C. 325(b)(3)(B) requires that television stations, within one year after October 5, 1992, and every three years thereafter, make an election between the right to grant retransmission consent under this subsection and the right to signal carriage under section 534 of this title.''[4] In this Order, we revise § 76.66(e)(3) of the Commission's rules in order to conform to the requirements of the Communications Act. Specifically, we correct the references to the upcoming carriage election cycles in the first and second sentences to confirm that the next cycle runs from 2024–2026 (not 2024–2027), and the following cycle runs from 2027–2029 (not 2028–2030).

Regulatory Analyses

Administrative Procedure Act

We find that notice and comment procedures are unnecessary under the ''good cause'' exception of the Administrative Procedure Act (APA) because correcting the references in § 76.66(e)(3) entails no exercise of our administrative discretion.[5] The dates of each carriage cycle are long-established as a matter of law, and the reference to these dates in § 76.66 is merely as an aid to understanding. The rule change does not establish additional regulatory obligations or burdens on regulated entities. Consequently, we find notice and comment procedures are unnecessary for this action.

Paperwork Reduction Act Analysis

This document does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).[6] In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.[7]

Congressional Review Act

Because this is a technical correction, there is no impact under the Congressional Review Act, 5 U.S.C. 804(2). Thus, the Bureau will not send

[1] *Update to Publication for Television Broadcast Station DMA Determinations for Cable and Satellite Carriage,* Report and Order, FCC 22–89, MB Docket No. 22–239 (rel. Nov. 18, 2022).

[2] *Id.* at Appendix B, Final Rules, para. 3.

[3] 47 U.S.C. 325(b)(3)(B) (''The regulations required by subparagraph (A) shall require that television stations, within one year after October 5, 1992, and every three years thereafter, make an election between the right to grant retransmission consent under this subsection and the right to signal carriage under section 534 of this title.'').

[4] *Id.*

[5] 5 U.S.C. 553(b)(3)(B) (notice and comment is not necessary ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest'').

[6] The Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

[7] The Small Business Paperwork Relief Act of 2002 (SBPRA), Public Law 107–198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); *see* 44 U.S.C. 3506(c)(4).

a copy of this Order to Congress or the Government Accountability Office.

Regulatory Flexibility Act

Because these rule changes are being adopted without notice and comment, the Regulatory Flexibility Act [8] does not apply.

List of Subjects in 47 CFR Part 76

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 by making the following technical amendment:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Section 76.66 is amended by revising paragraph (e)(3) to read as follows:

§ 76.66 Satellite broadcast signal carriage.

* * * * *

(e) * * *

(3) A satellite carrier shall use the October 2021 Nielsen Local TV Station Information for the retransmission consent-mandatory carriage election cycle commencing on January 1, 2024, and ending on December 31, 2026. The October 2024 Nielsen Local TV Station Information Report shall be used for the retransmission consent-mandatory carriage election cycle commencing January 1, 2027, and ending December 31, 2029, and so forth using the publications for the October two years prior to each triennial election pursuant to this section. Provided, however, that a county deleted from a market by Nielsen need not be subtracted from a market in which a satellite carrier provides local-into-local service, if that county is assigned to that market in the 1999–2000 Nielsen Station Index Directory or any subsequent issue of that publication, or the Local TV Station Information Report commencing with October 2021, and every three years thereafter (*i.e.,* October 2024, October 2027, etc.). A satellite carrier may determine which local market in the State of Alaska will be deemed to be the relevant local market in connection with each subscriber in an area in the State of Alaska that is outside of a designated market, as described in paragraph (e)(2) of this section.

* * * * *

[FR Doc. 2023–19612 Filed 9–11–23; 8:45 am]

BILLING CODE 6712–01–P

[8] 5 U.S.C. 601 *et seq. See id.* section 601(2).

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 515, 538, and 552

[GSAR Case 2019–G503; Docket No. 2022–0019; Sequence No. 1]

RIN 3090–AK09

General Services Administration Acquisition Regulation (GSAR); Streamline GSA Commercial Contract Clause Requirements

AGENCY: Office of Acquisition Policy, General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing this final rule amending the GSAR to clarify and streamline the clauses contracting officers should reference in acquisitions for commercial products and services.

DATES: *Effective:* October 12, 2023.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Nicholas Giles or Ms. Johnnie McDowell, Procurement Analysts at 202–718–6112 or *GSARPolicy@gsa.gov*. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegsec@gsa.gov*. Please cite GSAR Case 2019–G503.

SUPPLEMENTARY INFORMATION:

I. Background

GSA published a proposed rule in the **Federal Register** at 87 FR 77783 on December 20, 2022, to amend the GSAR to streamline, reorganize, and delete duplicative and outdated clauses. These changes can be categorized into three areas: reorganization of commercial clauses and applicable parts; relocation of an FSS clause; and editorial changes.

This rule updates several clauses and other related parts by eliminating out of date references and any requirements that are not necessary by law. Specifically, GSA streamlined and reorganized the references in GSAR Clauses 552.212–71 and 552.212–72, and other related GSAR sections to reduce duplicative content and to ensure consistency within GSA's guidance as it relates to the acquisition of commercial products and commercial services.

In addition, GSA identified several duplicative and outdated clauses incorporated by reference at GSAR 552.212–71 *Contract Terms and Conditions Applicable to GSA Acquisitions of Commercial Products and Commercial Services,* GSAR 552.212–72 *Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Products and Commercial Services,* and other related GSAR sections.

II. Discussion of the Final Rule

A. Analysis of Public Comments

GSA provided the public a 60-day comment period (December 20, 2022, to February 21, 2023). GSA did not receive any comments from the public.

B. Summary of Changes

GSA did not make any significant changes, or changes of any kind, since publication of the proposed rule.

III. Expected Impact of the Rule

This final rule will assist GSA's contracting officers in ensuring appropriate safeguards are followed when procuring commercial products and services. Contracting officers will be able to clearly identify which clauses to consider inserting in solicitations and contracts when procuring commercial products and services. In addition, the removal of duplicative and outdated clauses will reduce the amount of time contracting officers need in preparing solicitation packages and monitoring contracts.

IV. Executive Orders 12866, 13563 and 14094

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. E.O. 14094 (Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 and E.O. 13563. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has determined that this

is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

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 ''major 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. The GSA 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**. OIRA in OMB has determined that this is not a major rule under 5 U.S.C. 804.

VI. Regulatory Flexibility Act

GSA does not expect this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, at 5 U.S.C. 601, *et seq.,* because the rule incorporates clauses that are currently in use in GSA commercial solicitations and contracts and contractors are familiar with and are currently complying with these practices. However, a Final Regulatory Flexibility Analysis (FRFA) has been prepared. There were no comments submitted in response to the initial regulatory flexibility analysis provided in the proposed rule. The FRFA has been prepared consistent with the criteria of 5 U.S.C. 604 and is summarized as follows:

The GSA is issuing a final rule amending the GSAR at 552.212–71 and 552.212–72 and related parts to clarify and streamline the contract terms and conditions applicable to GSA acquisitions of commercial products and commercial services.

The objective of the final rule is to ensure contracting officers consider the appropriate clauses when procuring GSA acquisitions for commercial products and services.

There were no comments submitted and therefore no significant issues raised by the public in response to the initial regulatory flexibility analysis. However, GSA made three minor changes to GSAR clauses 552.212–71, 552.212–72 and 552.238–117. The clauses all required the date of the clauses to be changed to reflect the modifications made in this GSAR case.

The final rule applies to large and small business entities, which are responding to solicitations or are awarded contracts for commercial products or services. This final rule will not have a significant economic impact on a substantial number of small entities because the changes to the GSAR do not add any new requirements but rather will streamline the procurement process by reorganizing clauses, removing duplicative or outdated clauses, transferring, re-titling and renumbering referenced clauses and make technical and editorial changes to ensure contracting officers incorporate the correct clauses when procuring commercial products and commercial services.

GSA does not expect this final rule to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act, at 5 U.S.C. 601.

The final rule does not impose any new reporting or recordkeeping requirements on any small entities.

The final rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives to this rule which would accomplish the stated objectives.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VII. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 515, 538 and 552.

Government procurement.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.

Therefore, GSA amends 48 CFR parts 515, 538 and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 515, 538, and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 515—CONTRACTING BY NEGOTIATION

515.408 [Amended]

■ 2. Amend section 515.408 by—
■ a. Removing paragraph (a)(1);
■ b. Redesignating paragraphs (a)(2), (3) and (4) as paragraphs (a)(1), (2) and (3);
■ c. Removing the first sentence in the note in paragraph (b) introductory text;
■ d. Removing the parenthetical last sentence in paragraph (b)(3);
■ e. Removing the first sentence in the ''Column 2'' under paragraph (c);
■ f. Removing paragraph (d); and
■ g. Redesignating paragraph (e) as paragraph (d).

PART 538—Federal Supply Schedule Contracting

■ 3. Amend section 538.273 by revising paragraph (d)(22) introductory text and adding paragraph (d)(37) to read as follows:

538.273 FSS solicitation provisions and contract clauses.

* * * * *

(d) * * *

(22) 552.238–98, Clauses for Overseas Coverage. Use only in FSS solicitations and contracts when overseas acquisition is contemplated. The GSAR clauses and GSAR provisions in paragraphs (d)(22)(i) through (xi) of this section shall also be inserted in full text, when applicable.

* * * * *

(37) 552.238–117, Price Adjustment—Failure to Provide Accurate Information. Use only in FSS solicitations and contracts under the MAS program. This clause is used when the contract contains the basic clause 552.238–80 Industrial Funding Fee and Sales Reporting.

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Revise section 552.212–71 to read as follows:

552.212–71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Products and Commercial Services.

As prescribed in *512.301*(a)(1), insert the following clause:

Contract Terms and Conditions Applicable to GSA Acquisitions of Commercial Products and Commercial Services (Oct 2023)

(a) The Contractor agrees to comply with any clause that is incorporated herein by reference to implement

agency policy applicable to acquisition of commercial products, including commercial components, and commercial services. The clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The Contracting Officer should check the clauses in paragraph (b) that apply or delete the clauses that do not apply from the list. The Contracting Officer may add the date of the clause if desired for clarity. The GSAR clauses in paragraph (b) of this section are incorporated by reference.

(b) Clauses.

552.203–71 Restriction on Advertising
552.211–73 Marking
552.219–70 Allocation of Orders—Partially Set-Aside Items
552.229–70 Federal, State, and Local Taxes
552.232–72 Final Payment Under Building Services Contracts
552.237–71 Qualifications of Employees
552.242–70 Status Report of Orders and Shipments

■ 5. Revise section 552.212–72 to read as follows:

552.212–72 Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Products and Commercial Services.

As prescribed in *512.301*(a)(2), insert the following clause:

Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Products and Commercial Services (Oct 2023)

The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement provisions of law or Executive Orders applicable to acquisition of commercial items or components. The provision or clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The contracting officer should either check the provisions and clauses that apply or delete the provisions and clauses that do not apply from the lists in paragraphs (a) and (b). The contracting officer may add the date of the provision or clause if desired for clarity. The GSAR provisions in paragraph (a) and GSAR clauses in paragraph (b) are incorporated by reference.

(a) *Provisions.*

____552.223–72 Hazardous Material Information.

(b) *Clauses.*

____552.215–70 Examination of Records by GSA.
____552.223–70 Hazardous Substances.
____552.223–71 Nonconforming Hazardous Material.
____552.223–73 Preservation, Packaging, Packing, Marking, and Labeling of Hazardous Materials (HAZMAT) for Shipments.
____552.232–23 Assignment of Claims.

552.215–72 [Removed and Reserved]

■ 6. Remove and reserve section 552.215–72.

■ 7. Add section 552.238–117 to read as follows:

552.238–117 Price Adjustment—Failure to Provide Accurate Information.

As prescribed in 538.273(d)(37), insert the following clause:

Price Adjustment—Failure To Provide Accurate Information (Oct 2023)

(a) The Government, at its election, may reduce the price of this contract or contract modification if the Contracting Officer determines after award of this contract or contract modification that the price negotiated was increased by a significant amount because the Contractor failed to:

(1) Provide information required by this solicitation/contract or otherwise requested by the Government; or

(2) Submit information that was current, accurate, and complete; or

(3) Disclose changes in the Contractor's commercial pricelist(s), discounts or discounting policies which occurred after the original submission and prior to the completion of negotiations.

(b) The Government will consider information submitted to be current, accurate and complete if the data is current, accurate and complete as of 14 calendar days prior to the date it is submitted.

(c) If any reduction in the contract price under this clause reduces the price for items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States—

(1) The amount of the overpayment; and

(2) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective each quarter prescribed by the Secretary of Treasury under 26 U.S.C.6621(a)(2).

(d) Failure to agree on the amount of the decrease shall be resolved as a dispute.

(e) In addition to the remedy in paragraph (a) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

[FR Doc. 2023–19396 Filed 9–11–23; 8:45 am]

BILLING CODE 6820–61–P

Proposed Rules

Federal Register
Vol. 88, No. 175
Tuesday, September 12, 2023

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

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3560

[Docket No. RHS–23–MFH–0013]

RIN 0575–AD36

Updates to the Off-Farm Labor Housing (Off-FLH), Loan and Grant Rates and Terms; Clarification of Grant Agreement Terms

AGENCY: Rural Housing Service, U.S. Department of Agriculture (USDA).

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (RHS or Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), proposes to amend the current regulation for the Off-Farm Labor Housing (Off-FLH) program by clarifying the grant agreement term and adopting the period of performance as required by Federal award information requirements. The changes in this proposed rule are expected to clarify for applicants and grantees their obligations and requirements as Federal award recipients.

DATES: Comments on the proposed rule must be received on or before November 13, 2023.

ADDRESSES: Comments may be submitted electronically by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search'' field box, labeled ''Search for dockets and documents on agency actions'' enter the following docket number: (RHS–23–MFH–0013) or the RIN# 0575–AD36. To submit or view public comments, click the ''Search'' button, select the ''Documents'' tab, then select the following document title: (Updates to the Off-Farm Labor Housing (Off-FLH), Loan and Grant Rates and Terms; Clarification of Grant Agreement Terms) from the ''Search Results,'' and select the ''Comment'' button. Before inputting your comments, you may also review the ''Commenter's Checklist'' (optional). Insert your comments under the ''Comment'' title, click ''Browse'' to attach files (if available). Input your email address and select ''Submit Comment.'' Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link.

Other Information: Additional information about Rural Development (RD) and its programs is available on the internet at *https://www.rd.usda.gov/.*

All comments will be available online for public inspection at the Federal eRulemaking Portal (*www.regulations.gov*).

FOR FURTHER INFORMATION CONTACT: Christa Lindsey, Finance and Loan Analyst, United States Department of Agriculture Rural Housing Service, Multifamily Housing Production and Preservation Division; telephone number: (352) 538–5747; email address: *mfh.programsupport@usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The RHS, an agency of the USDA, offers a variety of programs to build or improve housing and essential community facilities in rural areas. RHS offers loans, grants, and loan guarantees for single- and multi-family housing, childcare centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, and housing for farm laborers. RHS also provides technical assistance loans and grants in partnership with non-profit organizations, Indian tribes, state and Federal government agencies, and local communities.

Title V of the Housing Act of 1949 (Act) authorized the USDA to make housing loans to farmers to enable them to provide habitable dwellings for themselves or their tenants, lessees, sharecroppers, and laborers. The USDA then expanded opportunities in rural areas, making housing loans and grants to rural residents through the Single-Family Housing (SFH) and Multi-Family Housing (MFH) Programs.

The RHS also operates the MFH Farm Labor Housing direct loan and grant programs under Sections 514 and 516 which provide low interest loans and grants to provide housing for year-round and migrant or seasonal domestic farm laborers. These eligible farm laborers may work either at the borrower's farm (''on-farm'') or at any other farm (''off-farm''). Housing under these programs may be built in any area with a need and demand for housing for farm laborers.

II. Discussion of This Proposed Regulatory Action

Section 534(a) of the Housing Act requires notice and comment for rulemaking for all Rural Housing Service rules and regulations pursuant to Title V. The intention of this proposed rule is to update 7 CFR 3560.566 by clarifying the grant agreement term and adopting the period of performance as required by the Federal award information requirements outlined in 2 CFR 200.211. Pursuant to 2 CFR 200.1, the ''*period of performance*'' is defined as the total estimated time interval between the start of an initial Federal Award and the planned end date, which may include one or more funded portions, or budget periods. Identification of the period of performance in the Federal award per 2 CFR 200.211(b)(5) does not commit the awarding agency to fund the award beyond the currently approved budget period. Furthermore, a Federal award is defined under 2 CFR 200.1 as the instrument setting forth the terms and conditions of the grant agreement, cooperative agreement or other agreement for assistance as specified in 2 CFR 200.1.

The regulations set forth at 7 CFR 3560 establish the requirements for making loans and grants for Off-FLH and for ongoing operations of this housing.

Currently, the regulations set forth at 7 CFR 3560.566(c) determine the term of the grant agreement. As required by 2 CFR 200.211, the Agency must include the period of performance of the Federal award that has been given in the grant agreement. Therefore, the changes in this proposed rulemaking will further clarify the term of the grant agreement in 7 CFR 3560.566(c) and include a 5-year fixed period of performance in 7 CFR 3560.566(d).

III. Summary of Changes

The proposed changes would amend 7 CFR part 3560.566 to clarify the term of the grant agreement and adopt the period of performance as required by

the Federal award information requirements outlined in 2 CFR 200.211.

The Agency proposes the following changes to the loan and grant rates and terms in § 3560.566 as follows:

(1) Amend § 3560.566(c) to read as follows: (c) Term of grant agreement. The grant agreement will remain in effect for as long as there is a need for the housing, as determined by the Agency.

(2) Add paragraph (d) to section 3560.566 to read as follows: (d) Grant Period of Performance. The grant period of performance *is five (5) years,* which starts on the date the grant agreement is executed by both the Agency and the grantee and *ends five (5) years* from the date the grant agreement was executed by both the Agency and the grantee.

IV. Regulatory Information

Statutory Authority

The Off-FLH Loan and Grant program is authorized by Title V of the Housing Act of 1949 (Pub. L. 81–171), as amended; 42 U.S.C. 1484; 42 U.S.C. 1486(h); and 42 U.S.C. 1480; and implemented under 7 CFR part 3560, subpart L.

Executive Order 12372, Intergovernmental Review of Federal Programs

This program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. RHS conducts intergovernmental consultations for each loan in accordance with 2 CFR part 415, subpart C.

Executive Order 12866, Regulatory Planning and Review

This proposed rule has been determined to be non-significant and, therefore, was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988. In accordance with this rule: (1) Unless otherwise specifically provided, all State and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before suing in court that challenges action taken under this rule.

Executive Order 13132, Federalism

The policies contained in this proposed rule do not have any substantial direct effect on 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. This proposed rule does not impose substantial direct compliance costs on State and local Governments; therefore, consultation with States is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the proposed rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RHS on this rule, they are encouraged to contact USDA's Office of Tribal Relations or RD's Tribal Coordinator at: *AIAN@usda.gov* to request such a consultation.

National Environmental Policy Act

This document has been reviewed in accordance with 7 CFR part 1970, subpart A, ''Environmental Policies.'' RHS determined that this action does not constitute a major Federal action significantly affecting the quality of the environment. In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement (EIS) is not required.

Regulatory Flexibility Act

This proposed rule has been reviewed regarding the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature on this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Unfunded Mandates Reform Act (UMRA)

Title II of the UMRA, Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal Governments and on the private sector. Under section 202 of the UMRA, Federal Agencies generally must prepare a written statement, including cost-benefit analysis, for proposed and Final Rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal Governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires a Federal Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal Governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575–0189. This proposed rule contains no new reporting and recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

E-Government Act Compliance

RHS is committed to complying with the E-Government Act by promoting the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information, services, and other purposes.

Civil Rights Impact Analysis

Rural Development has reviewed this rule in accordance with USDA Regulation 4300–4, Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, or disability. After review and analysis of the rule and available data, it has been determined that implementation of the rule will not adversely or disproportionately impact very low, low- and moderate-income populations, minority populations, women, Indian tribes, or persons with disability by virtue of their race, color, national origin, sex, age, disability, or marital or familial status. No major civil rights

impact is likely to result from this proposed rule.

Assistance Listing

The programs affected by this regulation is listed in the Assistance Listing Catalog (formerly Catalog of Federal Domestic Assistance) under number 10.405—Farm Labor Housing Loans and Grants.

Non-Discrimination Statement Policy

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, staff office; the or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, USDA Program Discrimination Complaint Form, which can be obtained online at *https://www.usda.gov/sites/default/files/documents/ad-3027.pdf,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights about the nature and date of an alleged civil rights violation.

The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

List of Subjects in 7 CFR 3560

Accounting, Administrative practice and procedure, Aged, Conflict of interest, Government property management, Grant programs—housing and community development, Insurance, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate-income housing, Migrant labor, Mortgages, Nonprofit organizations, Public- housing, Rent-subsidies, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, the Rural Housing Service proposes to amend 7 CFR part 3560 as follows:

PART 3560—DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS

■ 1. The authority citation for part 3560 continues to read as follows:

Authority: 42 U.S.C. 1480.

Subpart L—Off-Farm Labor Housing

■ 2. Amend § 3560.566 by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 3560.566 Loan and grant rates and terms.

* * * * *

(c) *Term of grant agreement.* The grant agreement will remain in effect for as long as there is a need for the housing, as determined by the Agency.

(d) *Grant Period of Performance.* The grant period of performance is five (5) years, which starts on the date the grant agreement is executed by both the Agency and the grantee and ends five (5) years from the date the grant agreement was executed by both the Agency and the grantee.

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2023–19662 Filed 9–11–23; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1786; Airspace Docket No. 23–AGL–22]

RIN 2120–AA66

Amendment of Class E Airspace; Roseau, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Roseau, MN. The FAA is proposing this action as the result of an airspace review due to the decommissioning of the Roseau very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operating Network (MON) Program. The name and geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before October 27, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–1786 and Airspace Docket No. 23–AGL–22 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instruction for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/*

publications/. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Roseau Municipal Airport/Rudy Billberg Field, Roseau, MN, to support instrument flight rule (IFR) operations at this airport.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or dely. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT post 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–14FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing to amend 14 CFR part 71 by modifying the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile (decreased from a 7-mile) radius of Roseau Municipal Airport/Rudy Billberg Field, Roseau, MN; and updating the name (previously Roseau Municipal Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review due to the decommissioning of the Roseau VOR, which provided navigation information to this airport, as part of the VOR MON Program, and to support IFR operations at this airport.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL MN E5 Roseau, MN [Amended]

Roseau Municipal Airport/Rudy Billberg Field, MN
(Lat 48°51′23″ N, long 95°41′49″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Roseau Municipal Airport/Rudy Billberg Field.

* * * * *

Issued in Fort Worth, Texas, on September 6, 2023.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2023–19549 Filed 9–11–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1787; Airspace Docket No. 23–AGL–23]

RIN 2120–AA66

Amendment of Class E Airspace; Mount Pleasant, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Mount Pleasant, MI. The FAA is proposing this action as the result of an airspace review due to the decommissioning of the Mount Pleasant very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operating Network (MON) Program. The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before October 27, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–1787 and Airspace Docket No. 23–AGL–23 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instruction for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Mount Pleasant Municipal Airport, Mount Pleasant, MI, to support instrument flight rule (IFR) operations at this airport.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or dely. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT post 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–14FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an

annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing to amend 14 CFR part 71 by modifying the Class E airspace extending upward from 700 feet above the surface to within a 6.6-mile (decreased from a 7-mile) radius of Mount Pleasant Municipal Airport, Mount Pleasant, MI; and updating the geographic coordinates of airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review due to the decommissioning of the Mount Pleasant VOR, which provided navigation information to this airport, as part of the VOR MON Program, and to support IFR operations at this airport.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL MI E5 Mount Pleasant, MI [Amended]

Mount Pleasant Municipal Airport, MI
(Lat 43°37′18″ N, long 84°44′14″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Mount Pleasant Municipal Airport.

* * * * *

Issued in Fort Worth, Texas, on September 6, 2023.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2023–19547 Filed 9–11–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 702

RIN 1240–AA17

Longshore and Harbor Workers' Compensation Act: Civil Money Penalties Procedures

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act and its extensions. To promote accountability and ensure fairness, OWCP proposes new rules for imposing and reviewing civil money penalties prescribed by the Longshore Act. The proposed rules would also set forth the procedures to contest OWCP's penalty determinations.

DATES: The Department invites written comments on the proposed rule from interested parties. Written comments must be received by November 13, 2023.

ADDRESSES: You may submit written comments, identified by RIN number 1240–AA17, by any of the following methods. To facilitate the receipt and processing of comments, OWCP encourages interested parties to submit their comments electronically.

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions on the website for submitting comments.
- *Regular Mail or Hand Delivery/Courier:* Submit comments on paper to the Division of Federal Employees', Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, Room S–3229, 200 Constitution Avenue NW, Washington, DC 20210. The Department's receipt of U.S. mail may be significantly delayed due to security procedures. You must take this into consideration when preparing to meet the deadline for submitting comments.

Instructions: All submissions received must include the agency name and the Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov.* Please do not include any personally identifiable or confidential business information you do not want publicly disclosed.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.* Although some information (*e.g.,* copyrighted material) may not be available through the website, the entire rulemaking record, including any copyrighted material, will be available for inspection at OWCP. Please contact the individual named below if you would like to inspect the record.

FOR FURTHER INFORMATION CONTACT: Antonio Rios, Director, Division of Federal Employees', Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, (202) 693–0040, *rios.antonio@dol.gov.* TTY/TDD callers may dial toll free 1–877–889–5627 for further information.

SUPPLEMENTARY INFORMATION:

I. Background of This Rulemaking

The Longshore and Harbor Workers' Compensation Act (LHWCA or Act), 33 U.S.C. 901–50, establishes a comprehensive Federal workers' compensation system for an employee's disability or death arising in the course of covered maritime employment. *Metro. Stevedore Co.* v. *Rambo,* 515 U.S. 291, 294 (1995). The Act's provisions have been extended to (1) contractors working on military bases or U.S. government contracts outside the United States (Defense Base Act, 42 U.S.C. 1651–54); (2) employees of nonappropriated fund instrumentalities (Nonappropriated Fund Instrumentalities Act, 5 U.S.C. 8171–73); (3) employees engaged in operations that extract natural resources from the outer continental shelf (Outer Continental Shelf Lands Act, 43 U.S.C. 1333(b)); and (4) private employees in the District of Columbia injured prior to July 26, 1982 (District of Columbia Workers' Compensation Act of May 17, 1928, Public Law 70–419 (formerly codified at 36 DC Code 501 *et seq.* (1973) (repealed 1979)). Consequently, the Act and its extensions cover a broad range of claims for injuries that occur throughout the United States and around the world.

OWCP's sound administration of these programs involves periodic reexamination of the procedures used for claims processing and related issues. On April 28, 2020, OWCP hosted a public outreach webinar to solicit stakeholders' views on how OWCP could improve its processes. *See* E.O. 13563, sec. 2(c) (January 18, 2011) (requiring public consultation prior to issuing a proposed regulation). OWCP considered the feedback received during that session in developing the proposal. For example, participants noted that the statute only allows penalties for knowing and willful failures to file the report, so OWCP should establish knowledge and willfulness before assessing a penalty. They also noted that employers and insurance carriers should have a method to contest penalty assessments. On December 14, 2020, OWCP published a Notice of Proposed Rulemaking and a Direct Final Rule in the **Federal Register** revising regulations governing electronic filing and settlements and establishing new procedures for assessing and adjudicating penalties under the Act. 85 FR 80601, 85 FR 80698. On January 20, 2021, a new administration assumed office. The Assistant to the President and Chief of Staff issued a memorandum to the Heads of Executive Departments entitled ''Regulatory Freeze Pending Review.'' 86 FR 7424. The memorandum directed agencies to consider pausing or delaying certain regulatory actions for the purpose of reviewing questions of fact, law, and policy raised. OWCP believed that the most efficient way to implement the memorandum was to withdraw both the Direct Final Rule and the Notice of Proposed Rulemaking, rather than delay the effective date of the Direct Final Rule. The comment period was still open, and OWCP would have had to withdraw the Direct Final Rule anyway if it received significant adverse comments before the comment period closed. In accordance, on February 9, 2021, OWCP withdrew the Notice of Proposed Rulemaking and the Direct Final Rule. 86 FR 8686, 86 FR 8721. Withdrawing the rule gave the new administration time to review the rule and consider the policies it would have implemented. After careful consideration, OWCP decided to move forward with a proposal to update its existing penalty regulations and implement a procedural scheme for employers to challenge penalties assessed against them.

OWCP requests comments on all issues related to this rulemaking, including economic or other regulatory impacts on the regulated community.

II. Overview of the Proposed Rule

The proposed rule would add new sections and amend existing sections to implement the Act's civil money penalty provisions. The Act allows OWCP to impose a penalty when an employer or insurance carrier fails to timely report a work-related injury or death, 33 U.S.C. 930(e), or fails to timely report its final payment of compensation to a claimant, 33 U.S.C. 914(g). *See* 20 CFR 702.204, 702.236. The proposed rule would revise current § 702.204 to provide for graduated penalties for an entity's failure to timely file, or falsification of, the required report of an employee's work-related injury or death. *See* 33 U.S.C. 930(a); 20 CFR 702.201. The proposed rule provides that the penalty assessed will increase for each additional violation the employer has committed over the prior two years. The current regulation states only the maximum penalty allowable, without providing further guidance or a graduated penalty scheme. The proposed rule would also add new §§ 702.206, 207, and 208. These proposed sections would add procedures for the District Director to notify entities of failures to accurately and timely file, provide an opportunity for a response before the District Director issues a notice of proposed penalty, and provide guidance to both the District Director and the Director in determining the amount of the proposed penalty and penalty by setting forth aggravating and mitigating factors they may consider.

The proposed rule also contains a new subpart I setting out procedures for challenging proposed penalties and penalties under both § 702.204 (for an entity's failure to timely file, or falsification of, the required report of an employee's work-related injury or death) and § 702.236 (for failing to report the termination of payments). These proposed procedures would allow an entity against whom a penalty is assessed the opportunity for a hearing before an administrative law judge, and to petition the Secretary of Labor (Secretary) for further review. After receiving the OWCP Director's final penalty order assessing the penalty, consistent with sections 554 and 556 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the respondent would be able to request a hearing before an administrative law judge (ALJ) under proposed § 702.906(a). During the hearing, entities would have the opportunity to submit facts and arguments for consideration consistent with the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18). The ALJ would determine whether the respondent violated the statutory or regulatory provision under which the penalty was assessed and whether the amount of the penalty assessed was appropriate. Consistent with section 557 of the APA, the ALJ's decision would become the decision of the Agency without further proceedings, unless within 30 days, the respondent requested reconsideration of the ALJ's decision under proposed § 702.907 or petitioned the Secretary for review under proposed § 702.908. The Secretary's review would be discretionary and based on the record. These additional levels of review are consistent with the formal adjudication procedures under the Administrative Procedure Act, 5 U.S.C. 554, 556–557, and Recommendation 93–1 of the Administrative Conference of the United States, which recommends that formal adjudication under the Administrative Procedure Act be made available where a civil money penalty is at issue. The proposed procedures would fully protect employers' and insurance carriers' rights to challenge OWCP's action before any penalty becomes final and subject to collection

and ensure transparency and fairness in the enforcement proceedings.

IV. Section-by-Section Explanation

Section 702.204 Employer's Report; Penalty for Failure To Furnish and or Falsifying

Under 33 U.S.C. 930(e), ''any employer, insurance carrier, or self-insured employer who knowingly and willfully fails or refuses to send any report'' required by section 930 or ''knowingly or willfully makes a false statement or misrepresentation in any such report'' is subject to a civil penalty for each violation. Proposed § 702.204 would revise the current regulation in several ways. First, paragraphs (a)(1) and (a)(3) clarify that ''knowingly'' means actual knowledge or constructive knowledge—that is, that the entity knew or reasonably should have known of the violation. This is similar to the test for knowledge under the Occupational Safety and Health Act (OSH Act), 29 U.S.C. 651 *et seq. See, e.g., Sanderson Farms, Inc.* v. *Perez,* 811 F.3d 730, 735 (5th Cir. 2016) (explaining that to satisfy the knowledge element of a prima facie case of an Occupational Safety and Health Administration (OSHA) violation, the Secretary of Labor has to prove that the employer had actual or constructive knowledge of the violation); *N & N Contractors, Inc.* v. *Occupational Safety & Health Rev. Comm'n,* 255 F.3d 122, 127 (4th Cir. 2001) (noting that an employer has constructive knowledge of a violation of a safety regulation if the employer fails to use a reasonable diligence to discern the presence of the violative condition); *Halmar Corp.,* 18 BNA OSHC 1014, 1016 (No. 94–2043, 1997) (explaining that the Commission's test for knowledge is whether the employer knew, or with the exercise of reasonable diligence could have known, of the violation.)

Proposed paragraph (a)(1) further explains that the entity must have knowledge of ''the employee's injury or death, that the injury or death is likely covered by the Act, that a report is required, and that a report was not timely filed.'' The statute allows the Secretary to assess penalties when the failure, refusal, false statement, or misrepresentation is knowing, so this would clarify that knowledge includes knowledge of the employee's condition as well as of the legal requirement for a report and the fact that the report was not properly submitted. Similarly, paragraph (a)(3) explains that knowledge of a false statement or misrepresentation requires knowledge that the information in the report is untrue, incomplete, or misleading.

Proposed paragraphs (a)(2) and (a)(4) address the willfulness requirement in the statute. Proposed paragraph (a)(2) explains that an entity willfully fails or refuses to send a report when it intentionally disregards the reporting requirement or is plainly indifferent to the reporting requirement. This is similar to the definition of willfulness in other contexts. The OSH Act, 29 U.S.C. 666(a), also provides for penalties for willful violations but does not define willfulness. The Department of Labor's OSHA has provided that a willful violation exists under the OSH Act where an employer has demonstrated either an intentional disregard for the requirements of the OSH Act or a plain indifference to employee safety. OSHA Instruction CPL 02–00–164, Field Operations Manual, issued April 14, 2020, pp. 4–22—4–24. There is ample case law validating the Department's willfulness definition. *See, e.g., Bianchi Trison Corp.* v. *Sec'y,* 409 F.3d 196, 208 (3d Cir. 2005) (''Although the [OSH] Act does not define the term 'willful,' courts have unanimously held that a willful violation of the [OSH] Act constitutes 'an act done voluntarily with either an intentional disregard of, or plain indifference to, the [OSH] Act's requirements.'''); *Chao* v. *Occupational Safety and Health Rev. Comm'n,* 401 F.3d 355 (5th Cir. 2005) (''A willful violation is one committed voluntarily, with either intentional disregard of, or plain indifference to, OSH Act requirements''); *Fluor Daniel* v. *Occupational Safety and Health Rev. Comm'n,* 295 F.3d 1232 (11th Cir. 2002) (explaining that ''[a]lthough Section 666 does not define the terms 'willful' or 'willfully,''' it is ''an intentional disregard of, or plain indifference to, OSHA requirements''); *Stanley Roofing Co.,* 21 BNA OSHC 1462, 1466 (2006) (discussing that a willful violation is one committed with intentional, knowing or voluntary disregard for the requirements of the Act or with plain indifference). Proposed paragraph (a)(4) addresses willfulness in making a false statement or misrepresentation. Similar to paragraph (a)(2), OWCP proposes to establish willfulness when an entity intentionally disregards or exhibits plain indifference to the truth. Proposed paragraph (a)(5) is intended to explain that when establishing a false statement or misrepresentation, OWCP only needs to demonstrate that doing so was knowing *or* willful—not both. *See* 33 U.S.C. 930(e).

Proposed paragraph (b) provides that the number of penalties assessed in the prior two years against an entity will be considered in proposing and assessing further penalties. Proposed paragraph (b) also lists the baseline penalty amounts that will be recommended, beginning at five percent of the maximum penalty amount for a first violation, with the penalty doubling for each subsequent violation through the fifth violation. The sixth violation and subsequent violations will result in the maximum penalty. OWCP has proposed a percentage scheme because the maximum penalty amount will be adjusted every year under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, section 701. Basing the baseline proposed penalty on a percentage of the maximum penalty amount, rather than a dollar amount, will allow OWCP to rely on the table even as the maximum penalty amount changes each year. Furthermore, as the maximum penalty is set by statute and regulation, a graduated penalty scheme beginning at a low percentage will allow OWCP to increase the baseline penalty with each subsequent violation and thereby increase the deterrent effect. As expanded upon later in the explanation for § 702.208, the baseline proposed penalty amount for each violation can be adjusted higher or lower, consistent with the statutory maximum, based on relevant aggravating and mitigating factors.

Section 702.206 Notice of Failure To Timely Submit Accurate Report

Under proposed paragraph (a) of § 702.206, when OWCP receives information that indicates an injury or death has occurred on a particular date but has not received a report as required by § 702.201, the District Director will send a notice to the employer. This is consistent with the procedures set forth in chapter 08–0302 of OWCP's Longshore Procedure Manual, which instructs the District Director to send a missing form LS–202 pre-penalty letter. As explained in section 6 of chapter 08–0302, this pre-penalty letter describes the evidence OWCP has received that indicates an injury or death has occurred on a particular date; notifies the employer of its responsibility to file a report within 10 days of that date; and requests an explanation for the employer's failure to file a report within the required time limit. Furthermore, under proposed paragraph (a), the District Director's notice would specifically notify the employer that it may be subject to a penalty if its failure to timely submit a report is knowing and willful and instructs the employer

that it must file the required report no later than ten days after the receipt of the notice. As explained in the manual, ''once an employer has been advised in writing of its responsibility to file a timely report, any further failure should be considered knowing and willful.'' OWCP has therefore preliminarily determined that the first notice should clearly explain the penalties for not filing the report once the employer is undeniably on notice of the requirements—*i.e.,* that OWCP will consider continued disregard of the legal requirement to be knowing and willful.

Proposed paragraph (b) provides that ''if the employer does not file the required report within ten days of receipt of the notice described in paragraph (a), the District Director will send a second notice to the employer. As explained above, once the first notice has been sent to the employer, the employer is undeniably on notice of the requirement to timely file an accurate report and any future failures demonstrate a conscious disregard for the requirement. In this second notice, the District Director would notify the employer that its failure to file the required report after receipt of the notice described in paragraph (a) constitutes evidence that its failure to timely submit a report is knowing and willful; request an explanation for the failure to file a report within the required time limit and request the employer's reasons why the full baseline penalty amount under § 702.204 should not be assessed against the employer, including documentation supporting any mitigating factors claimed under § 702.208(c); and instruct the employer that its response should be filed within 30 days of receipt of the notice. This is consistent with the procedures set forth in the manual, although under the proposed rule, the information requested by the District Director is bifurcated into two notices rather than the single pre-penalty letter for a missing form LS–202 described in the manual. While the District Director may have other evidence that demonstrates knowledge and willfulness, this bifurcated notice system would ensure that by the time the District Director notifies the employer that its failure to timely submit a report is knowing and willful, the District Director has clear evidence that the employer was, at a minimum, aware of the legal requirements and yet chose to disregard them by failing to timely submit a report.

Under proposed paragraph (c), when OWCP receives a report filed more than ten days from the date of an employee's injury or death or the date an employer has knowledge of an employee's injury or death, and the District Director has not already sent a notice under paragraph (a), the District Director may notify the employer of its responsibility to file a report within ten days of the date of an employee's injury or death or the date an employer has knowledge of an employee's injury or death. This is consistent with the first part of the pre-penalty letter for a late form LS–202 and the procedure manual, which also instructs the District Director to notify the employer of their obligations when a report is filed late. Unlike with a second notice of a missing form, however, the District Director would not automatically inform the employer that it may be subject to a penalty. In certain situations, however, the District Director may have information indicating evidence of knowledge and willfulness, in which case they will inform the employer that it may be subject to a penalty for failing to timely file the report as required by section 930(a) of the Act. In such circumstances, the notice will also request an explanation for the failure to file a report within the required time limit and the employer's reasons why the full baseline penalty amount under § 702.204 should not be assessed against the employer, including documentation supporting any mitigating factors claimed under § 702.208(c), and instruct the employer that its response should be filed within 30 days of receipt of the notice.

Under proposed paragraph (d), when OWCP receives a report containing a false statement or misrepresentation, the District Director would send a notice to the employer that describes the evidence that indicates the report contains a false statement or misrepresentation; notifies the employer that it may be subject to a penalty if the false statement or misrepresentation was made knowingly or willfully; requests an explanation for the false statement or misrepresentation and the employer's reasons why the full baseline penalty amount under § 702.204 should not be assessed against the employer; and instructs the employer that its response should be filed within 30 days of the date of the letter. Unlike with missing reports, the statute only requires that the false statement or misrepresentation be made knowingly *or* willingly, but not necessarily both. The District Director could obtain this evidence from many different sources if they suspect a false statement or misrepresentation. For example, the District Director may learn about injuries from news reports, from employee advocates, or from employees themselves.

OWCP requests comments on all aspects of proposed § 702.206, and particularly on the sources and type of information the agency should use to determine whether a failure was knowing or willful.

As described earlier, this proposed rule applies to the LHWCA and its extensions, including the Defense Base Act, which covers contractors working on military bases or U.S. government contracts outside the United States. 42 U.S.C. 1651–54. There may be special considerations when determining whether an employer acts with knowledge and willfulness when it comes to reporting injuries sustained by employees of Federal contractors abroad. For example, there may be a heightened awareness of the legal requirements, either through the procurement process or other avenues. The contracting agencies may have related reporting requirements, and such information may demonstrate the contractor-employer's state of mind. OWCP therefore seeks comment on how to address failures under the Defense Base Act in particular, in light of the additional information available to the Federal Government, that would establish knowledge and willfulness.

Section 702.207 Consideration of Response; Notice of Proposed Penalty

Proposed § 702.207 sets forth the process for considering the response and issuing the notice of proposed penalty. Under proposed paragraph (a), the District Director would consider the employer's responses, if any, to the notices described in § 702.206, as well as any other information the District Director has about the injury or the respondent, to determine whether the failure, refusal, false statement, or misrepresentation was knowing or willful as set forth in § 702.204. As with § 702.206(d), the District Director may have information about an injury or illness from many different sources, such as news reports, employee advocates, or employees themselves.

Under proposed paragraph (b), if the District Director determines that there was a violation, they will issue a notice of proposed penalty. Proposed paragraph (b) also provides that the Director has the authority and responsibility for assessing a penalty using the procedures set forth at subpart I. The notice of proposed penalty is described in detail in section 903 and the corresponding section of this preamble.

Section 702.208 Special Considerations in Setting Penalty Amounts

In proposed § 702.208, proposed paragraph (a) provides that the District Director and Director may consider mitigating and aggravating factors when determining the amount of the proposed and assessed penalties. This must be consistent with the statutory maximum, which is currently $28,304 as adjusted for inflation, so the penalty cannot exceed that amount. *See* Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, sec. 701; Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2023, 88 FR 2210 (January 13, 2023). Proposed paragraph (b) lists the aggravating factors that may be considered: extent of delay in filing the report; attempts to conceal the injury or death; failure to timely pay compensation due the claimant; failure to submit information sufficient to determine whether the correct compensation has been paid; any prior settlements of penalties assessed by the Director; any outstanding proposed penalties assessed against the entity; any prior penalties assessed against an entity's parent company or subsidiary; and any other factors relevant to the respondent's conduct with respect to the contents of the report. The statutory instruction that the penalty is ''not to exceed'' a maximum amount indicates that Congress intended to provide the agency with some discretion in setting an appropriate penalty. These are factors that OWCP has preliminarily determined are relevant to the appropriateness of the penalty and its potential to deter future violations, and they are largely consistent with the factors listed in chapter 08–0302 of the Longshore Procedure Manual. The final factor is meant to address facts specific to a particular employer or situation that may not be generally applicable but are still relevant in a particular case. The agency welcomes comment on these proposed factors.

Similarly, proposed paragraph (c) lists the mitigating factors that may be considered in lowering the amount: bringing the failure to comply with the Act or regulations to the District Director's attention; full payment of the correct amount of compensation to the claimant; timely compliance with the District Director's requests once failure to comply with the Act or regulations was brought to their attention; history of compliance with the Act and the regulations of this subchapter; a mass casualty event preventing the timely filing in all related cases; whether the respondent is a ''small entity'' within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601(6); and any other relevant factors. These are meant to address situations where a penalty would still have a deterrent effect at a lower level and are largely consistent with the mitigating factors listed in chapter 08–0302 of the Longshore Procedure Manual. The sixth factor, whether the respondent is a ''small entity,'' is listed as a proposed mitigating factor rather than a required consideration. The Regulatory Flexibility Act allows agencies to decline to consider small entity status for willful or criminal violations. *See* 5 U.S.C. 601 note § 223(b)(4). Because violations under section 930 of the statute are all necessarily willful or involve knowing misrepresentation, OWCP includes it as a mitigating factor to consider when appropriate. As with the aggravating factors, the final factor is meant to address facts specific to a particular employer or situation that may not be generally applicable but are still relevant in a particular case. OWCP welcomes comment on these proposed factors.

Section 702.233 Additional Compensation for Failure To Pay Without an Award

OWCP proposes to substitute the phrase ''additional compensation'' for the word ''penalty'' in § 702.233's current title (*i.e.,* ''Penalty for failure to pay an award''). Section 702.233 implements section 14(e) of the Act, 33 U.S.C. 914(e), which provides that claimants are entitled to an additional 10 percent of any compensation payable without an award when not paid within 14 days of when it is due. The Board has held that payments under section 14(e) (which are paid to claimants, not OWCP) are ''compensation'' and not ''penalties.'' *Robirds* v. *ICTSI Oregon, Inc.,* 52 BRBS 79 (2019) (en banc). In reaching its conclusion, the Board relied on the Federal Circuit's decision in *Ingalls Shipbuilding, Inc.* v. *Dalton,* 119 F.3d 972, 979 (Fed. Cir. 1997), which held that payments under section 14(e) are compensation. The majority of courts have also construed the similar language in section 14(f) of the Act, 33 U.S.C. 914(f) (requiring payment of additional 20 percent for late payments under terms of an award), as payments of ''compensation'' rather than a penalty. *See Tahara* v. *Matson Terminals, Inc.,* 511 F.3d 950, 953 (9th Cir. 2007) (''[T]he LHWCA's plain language supports that a § 914(f) late payment award is compensation''); *Newport News Shipbuilding and Dry Dock Co.* v. *Brown,* 376 F.3d 245, 251 (4th Cir. 2004) (''[I]t is plain that an award for late payment under [section] 14(f) is compensation.''). *But see Burgo* v. *General Dynamics Corp.,* 122 F.3d 140, 145–46 (2d Cir. 1997). Using ''additional compensation'' in the title of § 702.233 promotes accuracy and clarifies the instances in which the new penalty procedures apply.

Section 702.236 Penalty for Failure To Report Termination of Payments

Proposed § 702.236 revises the current rule to incorporate the penalty procedural rules proposed in new subpart I. It also clarifies that the Director, not the District Director, has the ultimate authority and responsibility for assessing the penalty. This is consistent with the process set forth in the new proposed subpart I.

Section 702.274 Employer's Refusal To Pay Penalty

The proposed changes to § 702.274 would simply (1) clarify that consequences for refusing to pay would occur only after the penalty becomes final and (2) update the outdated references to officials and offices within the Department of Labor.

Section 702.901 Scope of This Subpart

Proposed § 702.901 provides that the procedures set forth in subpart I apply when the District Director imposes civil monetary penalties under § 702.204 or 702.236 and that any penalties collected are to be deposited into the special fund described in 33 U.S.C. 944.

Section 702.902 Definitions

Proposed § 702.902 defines ''respondent'' as the employer, insurance carrier, or self-insured employer against whom the District Director is seeking to assess a penalty. This covers the possible entities against which penalties may be assessed under the scope of this subpart. 33 U.S.C. 914(g) authorizes the Secretary to assess a penalty against an employer, and section 935 substitutes the carrier for the employer regarding any obligations and duties imposed by the Act on the employer. Section 930(a) requires the employer to send the report to the Secretary, and section 930(e) explicitly makes employers, insurance carriers, and self-insured employers subject to possible penalties.

For the purpose of this subpart, OWCP interprets insurance carriers to include self-insured employer groups. Under 20 CFR 701.301(a)(13), a carrier is an insurance carrier or self-insurer meeting the statutory requirements with respect to authorization to provide insurance fulfilling the obligation of an

employer to secure the payment of compensation. The penalties in this rulemaking are meant to address failures and misrepresentations in filing required reports, so to the extent the obligation to file falls on self-insured employer groups, they too may be respondents under subpart I.

Section 702.903 Notice of Penalty; Response; Consequences of No Response

Proposed § 702.903 is a new provision governing the District Director's notice of proposed penalty, the respondent's response, and the consequences of not responding. Paragraph (a) requires OWCP to serve a written notice on the respondent by a method that verifies the delivery date because date of receipt triggers the respondent's response period. If the respondent does not accept service, the receipt date will be the attempted date of delivery. This is to ensure respondents do not have an incentive to evade service. Proposed paragraph (b) prescribes the contents of the notice: the facts giving rise to the proposed penalty, the statutory and regulatory basis for the proposed penalty, the amount of the proposed penalty and explanation of the amount, instructions for including documentation in the response, and the consequences of failing to timely respond. Proposed paragraph (c) gives the respondent 30 days to respond. The response may include an explanation of why the full proposed penalty amount should not be assessed and documentation relevant to the factual basis for the penalty, including any mitigating factors claimed under proposed § 702.208. Proposed paragraph (d) provides that if the respondent does not respond within 30 days, the District Director will submit the notice of proposed penalty to the Director as a preliminary decision. This ensures the process continues without delay while still providing the respondent with a fair opportunity to provide additional information or reasons that the District Director may not have considered.

§ 702.904 Preliminary Decision on Notice of Proposed Penalty After Timely Response

Proposed § 702.904 addresses the District Director's preliminary decision after a timely response from the respondent. If the respondent files a timely response to the notice described in § 702.903, the District Director would review the facts and any argument presented in the response, revise the proposed penalty amount, if warranted, and submit the revised notice of proposed penalty to the Director as a preliminary decision. This provision, along with proposed § 702.903, allows the respondent a meaningful opportunity to be heard before the District Director and allows the District Director time to revise the proposed penalty if appropriate.

Section 702.905 Director's Penalty Order; Request for Hearing

Proposed § 702.905 addresses the Director's issuance of the penalty order and the process for requesting a hearing before the Office of Administrative Law Judges. Proposed paragraph (a) provides that the Director will consider the District Director's preliminary decision and issue a penalty order in no more than 30 days. OWCP welcomes comment on this time frame.

Under proposed paragraph (a)(1) through (3), the penalty order must contain a statement of the reasons for the assessment, including an evaluation of any mitigating or aggravating factors considered, and the amount of the penalty; a statement of the respondent's right to request a hearing on the Director's penalty order and the method for doing so; and a statement of the consequences of failing to timely request a hearing. By including the reasons for the penalty and information about how to contest it, OWCP intends to provide the respondent with fair notice and a full opportunity to contest the penalty order.

Proposed paragraph (b) provides that the respondent has 15 days from receipt of the Director's penalty order to request a hearing before an Administrative Law Judge by filing a request for hearing with the District Director. *See, e.g.,* 20 CFR 702.316 (providing 14 days for parties to object to the District Director's recommendations and request a hearing). The request must be typewritten or legibly written so that the District Director can understand the contents. It must state the specific determinations in the Director's penalty order with which the respondent disagrees so that the ALJ understands the scope of the matter. It must also be signed and dated and include physical and electronic addresses so that OWCP and OALJ can document the date of the request and communicate with the respondent about the hearing.

Proposed paragraph (c) would stay the collection of the penalty until final resolution, either by the ALJ or the Secretary. This provision would ensure the respondent does not have to pay a penalty until it is fully adjudicated. Proposed paragraph (d) provides that if the respondent does not request a hearing within 15 days of receipt of the Director's penalty order, the assessment and amount of the penalty set forth in the Director's penalty order will be deemed a final decision of the Secretary. This is to ensure the decision becomes final and that OWCP can collect the penalty even if the respondent takes no action. *See* 20 CFR 726.320(a).

Section 702.906 Referral to the Office of Administrative Law Judges

Proposed § 702.906 addresses referral of an assessment and penalty for a hearing before an administrative law judge and is similar to the civil money penalty provisions for failure to insure under the Black Lung Benefits Act, 20 CFR 726.309 through 311. Paragraph (a) provides that, when the District Director receives a request for hearing, the District Director will notify the Chief Administrative Law Judge, who will assign the case to an administrative law judge. The District Director will also forward the administrative record, which consists of the District Director's notice of proposed penalty and preliminary decision, the documentation upon which the District Director relied in issuing the notice of proposed penalty and preliminary decision, all written responses and documentation filed by the respondent with the District Director, the Director's penalty order, the documentation upon which the Director relied in issuing the penalty order, and the respondent's request for hearing. Limiting the administrative record to documents considered by the District Director and Director will allow the ALJ to determine the appropriateness of the penalty.

Paragraph (b) provides that the rules set forth in 29 CFR part 18 will apply to any hearing before an administrative law judge under subpart I. 29 CFR part 18 contains the existing rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges and covers, among other things, general procedures, filing, service, and hearings.

Section 702.907 Decision and Order of Administrative Law Judge

Proposed § 702.907 governs the contents, issuance, service, and finality of the administrative law judge's decision on the Director's penalty order. Proposed paragraph (a) limits the administrative law judge's determinations to whether the respondent has violated the provision under which the penalty was assessed, and whether the penalty is appropriate under the standards set forth in §§ 702.204, 702.236, and 702.903(c)(2). Limiting the judge's consideration to these issues will help streamline the hearing and decision process. Proposed

paragraph (b) provides that documentation not presented to the District Director may not be admitted in any further proceedings before an ALJ unless the ALJ finds that the failure to submit the documentation to the District Director should be excused due to extraordinary circumstances. This is similar to 20 CFR 725.456(b)(1), which governs the admissibility of documentary evidence pertaining to the liability of a potentially liable operator and the identification of a responsible operator in a claim filed to seek benefits under the Black Lung Benefits Act, 30 U.S.C. 901–944. Similar to the limitation on issues considered by an ALJ, the limitation on evidence would simplify and streamline the penalty-assessment process. Proposed paragraph (b) would arm the District Director with sufficient information to accurately assess the proposed penalty before the case is referred to the Office of Administrative Law Judges. Extraordinary circumstances may be shown where an employer encounters ''particular difficulty obtaining the necessary evidence.'' *See* 65 FR 79989. This would entail showing that even after reasonable diligence, the respondent could not have produced the evidence at the District Director stage. For example, assume that after receiving the notice of proposed penalty, respondent requests but is unable to acquire documentation because of a catastrophic event or natural disaster that caused a delay in processing the request. If respondent obtains the documentation after the District Director issues the preliminary decision on the notice of proposed penalty, it may be able to demonstrate that extraordinary circumstances justify the admission of the evidence before the ALJ. Moreover, there is ample case law applying the extraordinary circumstances requirement under the Black Lung Benefits Act and confirming that it is a high bar to meet. *See, e.g., Howard* v. *Apogee Coal Company,* BRB No. 20–0229 BLA (Oct. 18, 2022) (rejecting employer's argument that extraordinary circumstances exist based on Director's actions in separate claims); *Dallas McCoy* v. *Eastern Associated,* BRB No. 19–0520 BLA (March 31, 2021) (unpub.) (''[T]he mere fact employer's exhibits were in DOL's possession does not show extraordinary circumstances for why Employer did not timely obtain and submit them.''); *Bobby Knight* v. *Heritage Coal Co.,* BRB No. 19–0435 BLA (Dec. 15, 2020) (unpub.) (rejecting employer's assertion that extraordinary circumstances exist where ''employer requested the relevant documents after the deadline'' to submit additional evidence).

Proposed paragraph (c) requires the administrative law judge's decision to include a statement of findings and conclusions, with the reasons and bases for those findings and conclusions; instructions for filing a motion for reconsideration with the Administrative Law Judge; and instructions for filing a petition for review with the Secretary. This would allow the Secretary or a court to review the decision and determine its reasonableness if the respondent seeks further judicial review.

Proposed paragraph (d) would require the administrative law judge to deliver a copy of the decision and order to the District Director for service on the parties. This is consistent with the procedures set forth in 20 CFR 702.349, where the administrative law judge delivers the compensation order to the District Director for service on the parties and on the representatives of the parties, if any. Proposed paragraph (e) provides that any party may move for reconsideration of the decision within 30 days of the date the District Director serves the decision, and that any such motion will suspend the running of time to file a petition for review under § 702.908 until the date the motion for reconsideration is denied or 30 days after a new decision is issued. This would allow time for the ALJ to consider the motion and, if warranted, issue a new decision while still preserving the parties' rights to further appeal the decision. Proposed paragraph (f) provides that, absent a timely request for reconsideration or petition for review, or if any such motions or petitions are denied, the administrative law judge's decision will be deemed a final decision of the Secretary. Proposed paragraph (g) provides that the ALJ will forward the complete hearing record to the District Director at the conclusion of all hearing proceedings. This is consistent with 20 CFR 702.349(a), where the District Director retains custody of the record after ALJ proceedings regarding a compensation order.

Section 702.908 Review by the Secretary

Proposed § 702.908 allows any party aggrieved by an administrative law judge's decision to petition the Secretary for review. Proposed paragraph (a) requires that any petition be filed within 30 days of the date on which the District Director serves the decision. Under proposed paragraph (b), if any party files a timely motion for reconsideration with the administrative law judge, the 30-day period will not begin to run until the judge issues a decision on reconsideration and any petition for review filed earlier will be dismissed without prejudice as premature. This is to ensure the ALJ process is complete before moving to the next level in the appeal process. Proposed paragraph (c) sets out the requirements for the petition for review: that it be typewritten or legibly written, state the specific determinations in the ALJ decision with which the petitioner disagrees, be signed and dated, and include attached copies of the ALJ's decision and any other relevant documents in the record. This is to ensure the Secretary or their designee has sufficient information on which to render a decision. And proposed paragraph (d) provides the mailing address for sending the petition, notes that documents are not considered filed until actually received by the Secretary, and requires the petition to be filed in the manner specified in the ALJ's decision and order. This is to allow for future address changes and technological advancements, while avoiding confusion if information in the regulation becomes outdated.

Section 702.909 Discretionary Review

Proposed § 702.909(a) provides that the Secretary's review of a timely petition is discretionary and that the Secretary will send written notice of their determination to all parties. Paragraph (a)(1) provides that, if the Secretary declines review, the administrative law judge's decision will be considered the final agency decision 30 days after the filing of the petition for review. Under paragraph (b)(2), if the Secretary chooses to review the decision, the Secretary will notify the parties of the issues to be reviewed and set a schedule for the parties to submit written arguments in whatever form the Secretary deems appropriate. Proposed paragraph (b) requires the District Director to forward the administrative record to the Secretary if the Secretary decides to review the administrative law judge's decision.

Section 702.910 Final Decision of the Secretary

Proposed § 702.910 limits the Secretary's review to the hearing record. The Secretary will review findings of fact under a substantial evidence standard and conclusions of law *de novo.* The Secretary may affirm, reverse, modify, or vacate the decision, and may remand to the Office of Administrative Law Judges for further review. This is based on the scope of review for the Benefits Review Board for cases under

its jurisdiction. *See* 20 CFR 802.301 (''Such findings of fact and conclusions of law may be set aside only if they are not, in the judgment of the Board, supported by substantial evidence in the record considered as a whole or in accordance with law.''). The Secretary's decision must be served on all parties and the Chief Administrative Law Judge.

Section 702.911 Settlement of Penalty

Proposed § 702.911 provides that the respondent and the Director or District Director may enter into a settlement at any time during the penalty proceedings. This provision would cover both proposed penalties and assessed penalties and is meant to allow flexibility and forestall further litigation if OWCP and the respondent reach agreement at any point during the proceedings. Upon settlement, the OWCP official with whom the respondent settled would transmit a copy of the settlement agreement to the Deputy Director for Longshore Claims. This is to ensure the Longshore program is aware of every settlement for the purpose of tracking collections and recovery, as well as for possible consideration as an aggravating factor under any future penalty proceedings involving the same respondent. Proposed § 702.911 also provides that penalties agreed upon in settlement agreements may be collected and recovered pursuant to § 702.912. This is to ensure that the Department has a mechanism for collecting agreed-upon payments. OWCP welcomes comment on this proposed paragraph, and specifically whether settlement agreements should be made public when transmitted to the Deputy Director for Longshore Claims.

Section 702.912 Collection and Recovery of Penalty

Paragraph (a) of proposed § 702.912 provides that, when a penalty becomes final under § 702.905(d), 702.907(f), 702.909(a)(1), 702.910, or 702.911, the penalty is immediately due and payable to the Department on behalf of the special fund described in 33 U.S.C. 944. Paragraph (b) provides that, if payment is not received within 30 days after it becomes due and payable, it may be recovered by a civil action brought by the Secretary, who will be represented by the Solicitor of Labor.

V. Legal Basis for the Proposed Rule

Section 39(a) of the LHWCA, 33 U.S.C. 939(a)(1), authorizes the Secretary of Labor to prescribe rules and regulations necessary for the administration of the Act. The statute further allows OWCP to impose a penalty when an employer or insurance carrier fails to timely report a work-related injury or death, 33 U.S.C. 930(e), or fails to timely report its final payment of compensation to a claimant, 33 U.S.C. 914(g). This proposed rule would effectuate these statutory provisions and falls well within these statutory grants of authority.

VI. Information Collection Requirements

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its implementing regulations, 5 CFR part 1320, require that the Department consider the impact of paperwork and other information collection burdens imposed on the public. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the Office of Management and Budget (OMB) under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, an agency generally may not subject a person to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

This proposed rule would not change any existing collections of information or generate any new collections of information. The forms for the first report of injury and notice of final payment are already approved under OMB Control Numbers 1240–0003 and 1240–0041, respectively. The information that respondents would submit to OWCP under this proposal would be in response to specific notices of proposed penalties and penalty orders. It would therefore fall under the exemption for requests for facts or opinions addressed to a single person. *See* 5 CFR 1320.3(h)(6).

VII. Executive Orders 12866, 13563, and 14094 (Regulatory Planning and Review)

Under E.O. 12866, OMB's Office of Information and Regulatory Affairs determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. *See* 58 FR 51735 (Oct. 4, 1993). Section 1(b) of E.O. 14094 amends sec. 3(f) of E.O. 12866 to define a ''significant regulatory action'' as an 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 affects 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 entitlements, 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 the E.O. *See* 88 FR 21879 (Apr. 11, 2023). This proposal would clarify the process for assessing and appealing penalties and is largely consistent with practices already in OWCP's procedural manual. As such, this proposal is not likely to generate additional costs to the regulated community. OIRA has determined that this proposed rule is not a significant regulatory action under sec. 3(f)(1) of E.O. 12866, so it has not reviewed it prior to publication.

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. It directs agencies to, among other things, propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; that it is tailored to impose the least burden on society, consistent with obtaining the regulatory objectives; and that, in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. Executive Order 13563 recognizes that some costs and benefits are difficult to quantify and provides that, when appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

The Department has considered this proposed rule with these principles in mind and has concluded that, if adopted, the regulated community would benefit from this regulation. Promulgating procedural rules related to civil money penalties would benefit employers (and their insurance carriers) against whom OWCP may assess penalties. Currently, the regulations contain no set procedures for employers to challenge penalties, which can lead to procedural decisions being made on a case-by-case basis. The proposed rules

would establish a transparent and consistent pathway for assessment and adjudication of penalties: clear notice of the proposed penalty and an opportunity to contest it; hearing by an administrative law judge upon request; the opportunity to petition the Secretary for discretionary review; and a stay of payment for the penalty assessed until review is complete and the decision becomes final. These procedures would clearly protect an employer's rights to be fully heard before having to pay a penalty and promote consistency and fairness across different districts and regions.

VIII. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on state, local, and tribal governments, and the private sector, ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' This proposed rule does not include any Federal mandate that may result in increased expenditures by state, local, and tribal governments, or increased expenditures by the private sector of more than $100,000,000 (in 1995 dollars). It is therefore not covered by the Unfunded Mandates Reform Act.

IX. Regulatory Flexibility Act and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

The Regulatory Flexibility Act of 1980, as amended (5 U.S.C. 601 *et seq.*) (RFA), requires an agency to prepare a regulatory flexibility analysis when it proposes regulations that will have ''a significant economic impact on a substantial number of small entities'' or to certify that the proposed regulations will have no such impact, and to make the analysis or certification available for public comment.

The Department has determined that a regulatory flexibility analysis under the RFA is not required for this rulemaking. While many longshore employers and a handful of insurance carriers may be small entities within the meaning of the RFA, *see generally* 77 FR 19471–72 (March 30, 2012), this proposed rule, if adopted as a final rule, will not have a significant economic impact on them. The procedures related to penalties generally simply provide additional structure and consistency to the assessment of penalties. While 33 U.S.C. 914(g) does not allow any discretion on the part of the agency, OWCP will take small entity status into account as a mitigating factor for penalties assessed under 33 U.S.C. 930(e). *See* 5 U.S.C. 601 note § 223(b) (limiting the mitigation provisions in section 223 of the Small Business Regulatory Enforcement Fairness Act to be subject to ''the requirements or limitations of other statutes.'') *See* proposed § 702.208(c)(6).

The Department therefore certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Thus, an initial regulatory flexibility analysis is not required. The Department, however, invites comments from members of the public who believe the proposed rule would have a significant economic impact on a substantial number of small longshore employers or insurers. The Department has provided the Chief Counsel for Advocacy of the Small Business Administration with a copy of this certification. *See* 5 U.S.C. 605(b).

X. Executive Order 13132 (Federalism)

The Department has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism and has determined that it does not have ''federalism implications.'' The proposed rule will not ''have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government'' if promulgated as a final rule.

List of Subjects in 20 CFR Part 702

Administrative practice and procedure, Claims, Longshore and harbor workers, Workers' compensation.

For the reasons set forth in the preamble, the Department of Labor proposes to amend 20 CFR part 702 as follows:

PART 702—ADMINISTRATION AND PROCEDURE

■ 1. The authority citation for part 702 continues to read as follows:

Authority: 5 U.S.C. 301, and 8171 *et seq.;* 33 U.S.C. 901 *et seq.;* 42 U.S.C. 1651 *et seq.;* 43 U.S.C. 1333; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; Secretary's Order 10–2009, 74 FR 58834.

■ 2. Revise § 702.204 to read as follows:

§ 702.204 Employer's report; penalty for failure to furnish and or falsifying.

(a) Any employer, insurance carrier, or self-insured employer who knowingly and willfully fails or refuses to send any report required by § 702.201, or who knowingly or willfully makes a false statement or misrepresentation in any report, shall be subject to a civil penalty not to exceed $28,304 for each such failure, refusal, false statement, or misrepresentation for which penalties are assessed after January 15, 2023.

(1) An entity knowingly fails or refuses to send a report required by § 702.201 when it has actual knowledge, or reasonably should have known, of the employee's injury or death, that the injury or death is likely covered by the Act, that a report is required, and that a report was not timely filed.

(2) An entity willfully fails or refuses to send a report required by § 702.201 when it intentionally disregards the reporting requirement or is plainly indifferent to the reporting requirement.

(3) An entity knowingly makes a false statement or misrepresentation in any report required by § 702.201 when it has actual knowledge, or reasonably should have known, that information it provides in the report is untrue, incomplete, or misleading.

(4) An entity willfully makes a false statement or misrepresentation in any report required by § 702.201 when it intentionally disregards or exhibits plain indifference to the truth.

(5) Proof of a false statement or misrepresentation made either knowingly or willfully in a report required by § 702.201 is sufficient to warrant imposition of a penalty under this section.

(b) In determining the penalty amount under paragraph (a) of this section, the number of penalties, if any, that have been assessed against the employer, insurance carrier, self-insured employer, or self-insured employer group in the two years preceding the most recent reporting violation will be considered. The baseline penalty will be in accordance with the following table and rounded up to the next dollar.

TABLE 1 TO PARAGRAPH (b)

Number of violations	Baseline (unadjusted) penalty as a percentage of statutory maximum
First missing/falsified report:	5
Second missing/falsified report:	10
Third missing/falsified report:	20
Fourth missing/falsified report:	40
Fifth missing/falsified report:	80
Sixth (and above) missing/falsified report:	100

■ 3. Add § 702.206 to read as follows:

§ 702.206 Notice of failure to timely submit accurate report.

(a) When OWCP receives information that indicates an injury or death has occurred on a particular date but has not received a first report of injury or death as required by § 702.201, the District Director will send a notice to the employer that:

(1) Describes the evidence that indicates a covered injury or death occurred on a particular date;

(2) Notifies the employer of its responsibility to file a report within 10 days of that date;

(3) Requests an explanation for the failure to file a report within the required time limit;

(4) Notifies the employer that it may be subject to a penalty if its failure to timely submit a report is knowing and willful; and

(5) Instructs the employer that it must file the required report no later than ten days after receipt of the notice.

(b) If the employer does not file the required report within ten days of receipt of the notice described in paragraph (a) of this section, the District Director will send a second notice to the employer that:

(1) Notifies the employer that its failure to file the required report after receipt of the notice described in paragraph (a) of this section constitutes evidence that its failure to timely submit a report is knowing and willful;

(2) Requests an explanation for the failure to file a report within the required time limit and reasons why the full penalty amount should not be assessed against the employer, including documentation supporting any mitigating factors claimed under § 702.208(c); and

(3) Instructs the employer that its response should be filed within 30 days of receipt of the notice.

(c) When OWCP receives a report filed more than ten days from the date of an employee's injury or death or the date an employer has knowledge of an employee's injury or death, and the District Director has not already sent a notice under paragraph (a) of this section, the District Director may notify the employer of its responsibility to file a report within ten days of that date. If the District Director preliminarily determines the failure to timely file was knowing and willful, this notice will also request an explanation for the failure to file a report within the required time limit and request the employer's reasons why the full penalty amount should not be assessed against the employer, including documentation supporting any mitigating factors claimed under § 702.208(c), and instruct the employer that its response should be filed within 30 days of receipt of the notice.

(d) When OWCP receives a report required by § 702.201 containing a false statement or misrepresentation, the District Director will send a notice to the employer that

(1) Describes the evidence that indicates the report contains a false statement or misrepresentation;

(2) Notifies the employer that it may be subject to a penalty if the false statement or misrepresentation was made knowingly or willfully;

(3) Requests an explanation for the false statement or misrepresentation and reasons why the full penalty amount should not be assessed against the employer; and

(4) Instructs the employer that its response should be filed within 30 days of the date of the letter.

■ 4. Add § 702.207 to read as follows:

§ 702.207 Consideration of response; notice of proposed penalty.

(a) The District Director will consider the employer's responses, if any, to the notices described in § 702.206, as well as any other information the District Director has about the injury or the respondent, to determine whether the failure, refusal, false statement, or misrepresentation was knowing or willful as set forth in § 702.204.

(b) If the District Director determines that the failure to file a timely report was knowing and willful, or the false statement or misrepresentation in such a report was knowing or willful, the District Director will issue a notice of proposed penalty. The Director has the authority and responsibility for assessing a penalty using the procedures set forth at subpart I of this part.

■ 5. Add § 702.208 to read as follows:

§ 702.208 Special considerations in setting penalty amounts.

(a) In proposing and setting penalty amounts, the District Director and Director may, consistent with the maximum penalty set forth in § 702.204, consider aggravating and mitigating factors.

(b) The Director may consider the following aggravating factors in determining whether to increase the proposed penalty amount:

(1) Extent of delay in filing the report;

(2) Attempts to conceal the injury or death;

(3) Failure to timely pay compensation due the claimant;

(4) Failure to submit information sufficient to determine whether the correct compensation has been paid;

(5) Any prior settlements of penalties assessed by the Director;

(6) Any outstanding proposed penalties assessed against the entity;

(7) Any prior penalties assessed against an entity's parent company or subsidiary; and

(8) Any other factors relevant to the respondent's conduct with respect to the contents of the report.

(c) The Director may consider the following mitigating factors in determining whether to reduce the proposed penalty amount:

(1) Bringing the failure to comply with the Act or regulations to the District Director's attention;

(2) Full payment of the correct amount of compensation to the claimant;

(3) Timely compliance with the District Director's requests once failure to comply with the Act or regulations was brought to their attention;

(4) History of compliance with the Act and the regulations of this subchapter;

(5) A mass casualty event preventing the timely filing in all related cases;

(6) Whether the respondent is a ''small entity'' within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601(6); and

(7) Any other relevant factors.

■ 6. Revise the section heading of § 702.233 to read as follows:

§ 702.233 Additional compensation for failure to pay without an award.

■ 7. Revise § 702.236 to read as follows:

§ 702.236 Penalty for failure to report termination of payments.

Any employer failing to notify the District Director that the final payment of compensation has been made as required by § 702.235 shall be assessed a civil penalty in the amount of $345 for any violation for which penalties are assessed after January 15, 2023. The Director has the authority and responsibility for assessing this penalty using the procedures set forth at subpart I of this part.

■ 8. Revise § 702.274 to read as follows:

§ 702.274 Employer's refusal to pay penalty.

In the event the employer refuses to pay the penalty assessed after it becomes final as set forth in subpart I of this part, the District Director shall refer the complete administrative file to the Deputy Director for Longshore Claims, Division of Federal Employees', Longshore and Harbor Workers' Compensation, for subsequent transmittal to the Associate Solicitor for Black Lung and Longshore Legal Services, with the request that appropriate legal action be taken to recover the penalty.

■ 8. Add subpart I to read as follows:

Subpart I—Procedures for Civil Money Penalties

§ 702.901 Scope of this subpart.

These procedures apply to the proposal, assessment, and adjudication of the civil money penalties prescribed by § 702.204 or § 702.236.

§ 702.902 Definitions.

In addition to the definitions provided in §§ 701.301 and 701.302, the following definition applies to this subpart:

Respondent means the employer, insurance carrier, or self-insured employer against whom the District Director is seeking to assess a civil penalty.

§ 702.903 Notice of proposed penalty; response; consequences of no response.

(a) The District Director will serve a written notice of proposed penalty through an electronic method authorized by OWCP or by trackable delivery method on each respondent against whom they are considering assessing a penalty. Where service is not accepted by a respondent, the notice will be deemed received by the respondent on the attempted date of delivery.

(b) The notice must set forth the—

(1) Facts giving rise to the proposed penalty;

(2) Statutory and regulatory basis for the proposed penalty;

(3) Amount of the proposed penalty, including an explanation for the amount proposed;

(4) Instructions for including documentation in the response, as set forth in paragraph (d) of this section; and

(5) Consequences of failing to timely respond to the notice as set forth in paragraph (e) of this section.

(c) The respondent must respond within 30 days of receipt of the notice. The response may include—

(1) Any explanation for why the full proposed penalty amount should not be assessed; and

(2) Documentation relevant to the factual basis for the penalty, including any mitigating factors under § 702.208.

(d) If the respondent does not respond within 30 days of receipt of the notice, the District Director will submit the notice of proposed penalty to the Director as a preliminary decision.

§ 702.904 Preliminary decision on notice of proposed penalty after timely response.

If the respondent files a timely response to the notice described in § 702.903, the District Director will review the facts and any argument presented in the response, revise the proposed penalty amount, if warranted, and submit the revised notice of proposed penalty to the Director as a preliminary decision.

§ 702.905 Director's penalty order; request for hearing.

(a) The Director will consider the District Director's preliminary decision and issue a Director's penalty order no more than 30 days after receipt of the District Director's preliminary decision. The Director's penalty order must—

(1) Include a statement of the reasons for the assessment, including an evaluation of any mitigating or aggravating factors considered, and the amount of the penalty;

(2) Set forth the respondent's right to request a hearing on the Director's penalty order and the method for doing so; and

(3) Set forth the consequences of failing to timely request a hearing as set forth in paragraph (d) of this section.

(b) The respondent has 15 days from receipt of the Director's penalty order to request a hearing before an Administrative Law Judge by filing a request for hearing with the District Director. The request must—

(1) Be typewritten or legibly written;

(2) State the specific determinations in the Director's penalty order with which the respondent disagrees;

(3) Be signed and dated by the respondent making the request or by the respondent's authorized representative;

(4) State both the physical mailing address and electronic mailing address for the respondent and the authorized representative for receipt of further communications.

(c) A timely hearing request will operate to stay collection of the penalty until final resolution of the penalty is reached by the Administrative Law Judge or the Secretary, as appropriate.

(d) If the respondent does not request a hearing within 15 days of receipt of the Director's penalty order, the assessment and amount of the penalty set forth in the Director's penalty order will be deemed a final decision of the Secretary.

§ 702.906 Referral to the Office of Administrative Law Judges.

(a) When the District Director receives a request for hearing in response to a Director's penalty order issued under § 702.905, the District Director will notify the Chief Administrative Law Judge, who will assign an Administrative Law Judge to the case. The District Director will also forward to the Office of Administrative Law Judges the following documentation, which will be considered the administrative record:

(1) The District Director's notice of proposed penalty and preliminary decision issued under §§ 702.903 and 702.904;

(2) The documentation upon which the District Director relied in issuing the notice of proposed penalty and preliminary decision;

(3) All written responses and documentation filed by the respondent with the District Director;

(4) The Director's penalty order;

(5) The documentation upon which the Director relied in issuing the penalty order; and

(6) The respondent's request for hearing.

(b) Except as otherwise provided in this subpart, the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges at 29 CFR part 18 will apply to hearings under this subpart.

§ 702.907 Decision and order of Administrative Law Judge.

(a) In reviewing the Director's penalty order, the Administrative Law Judge must limit their determinations to:

(1) Whether the respondent has violated the sections of the Act and regulations under which the penalty was assessed;

(2) The appropriateness of the penalty assessed as set forth in §§ 702.204, 702.236, 702.271, and 702.903(c)(2).

(b) Documentation not presented to the District Director may not be admitted in any further proceedings before an Administrative Law Judge unless the Administrative Law Judge finds that the failure to submit the documentation to the District Director should be excused due to extraordinary circumstances.

(c) The decision of the Administrative Law Judge must include a statement of findings and conclusions, with reasons and bases therefor, instructions for filing a motion for reconsideration with the Administrative Law Judge, and instructions for filing a petition for review with the Secretary.

(d) On the date of issuance, the Administrative Law Judge must deliver a copy of the decision and order on the District Director for service on the parties.

(e) Any party may ask the Administrative Law Judge to reconsider their decision by filing a motion within 30 days of the date the District Director serves the decision. A timely motion for reconsideration will suspend the running of the time for any party to file a petition for review under § 702.908 until the date the motion for reconsideration is denied or 30 days after a new decision is issued.

(f) If no party files a motion for reconsideration or petition for review within 30 days of the date the District Director serves the Administrative Law Judge's decision, or if any such motions or petitions are denied, the decision will be deemed a final decision of the Secretary.

(g) At the conclusion of all hearing proceedings, the Administrative Law Judge will forward the complete hearing record to the District Director who referred the matter for hearing, who will retain custody of the record.

§ 702.908 Review by the Secretary.

(a) Any party aggrieved by the decision of the Administrative Law Judge may petition the Secretary for review of the decision by filing a petition within 30 days of the date on which the District Director serves the decision. Copies of the petition must be served on all parties and on the Chief Administrative Law Judge.

(b) If any party files a timely motion for reconsideration under § 702.907(e), any petition for review filed before service of a decision on reconsideration, whether filed prior to or subsequent to the filing of a timely motion for reconsideration, will be dismissed without prejudice as premature. The 30-day time limit for filing a petition for review by any party will begin upon service of a decision on reconsideration.

(c) The petition for review must—

(1) Be typewritten or legibly written;

(2) State the specific determinations in the Administrative Law Judge's decision with which the party disagrees;

(3) Be signed and dated by the party or the party's authorized representative; and

(4) Include attached copies of the Administrative Law Judge's decision and any other documents admitted into the record by the Administrative Law Judge that would assist the Secretary in determining whether review is warranted.

(d) All documents submitted to the Secretary, including a petition for review, must be filed with the Secretary of Labor, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210, in the manner specified in the Administrative Law Judge's decision and order. Documents are not considered filed with the Secretary until actually received.

§ 702.909 Discretionary review.

(a) Following receipt of a timely petition for review, the Secretary will determine whether the Administrative Law Judge's decision warrants review. This determination is solely within the Secretary's discretion. The Secretary will send written notice of their determination to all parties.

(1) If the Secretary does not notify the parties within 30 days of the petition for review's filing that they will review the decision, the Administrative Law Judge's decision will be considered the final decision of the agency at the expiration of that 30 days.

(2) If the Secretary decides to review the decision, the Secretary will notify the parties within 30 days of the petition for review's filing of the issue or issues to be reviewed and set a schedule for the parties to submit written argument in whatever form the Secretary deems appropriate.

(b) If the Secretary decides to review the decision, the District Director must forward the administrative record compiled before the Administrative Law Judge to the Secretary.

§ 702.910 Final decision of the Secretary.

The Secretary's review is limited to the hearing record. The findings of fact in the decision under review shall be conclusive if supported by substantial evidence in the record as a whole. The Secretary's review of conclusions of law will be *de novo.* Upon review of the decision, the Secretary may affirm, reverse, modify, or vacate the decision, and may remand the case to the Office of Administrative Law Judges for further proceedings. The Secretary's final decision must be served upon all parties and the Chief Administrative Law Judge.

§ 702.911 Settlement of penalty.

At any time during proceedings under this subpart, the Director or District Director and the respondent may enter into a settlement of any proposed or assessed penalties. Upon settlement, the District Director or Director will transmit a copy of the settlement agreement to the Deputy Director for Longshore Claims. Any settlement agreement under this subpart may be considered as an aggravating factor under any future proceedings under this subpart. Penalties agreed upon in settlement agreements may be collected and recovered pursuant to § 702.912.

§ 702.912 Collection and recovery of penalty.

(a) When the determination of the amount of the penalty becomes final (*see* §§ 905(d), 907(f), 909(a)(1), 910, 911), the penalty is immediately due and payable to the U.S. Department of Labor on behalf of the special fund described in section 44 of the Act, 33 U.S.C. 944. The respondent will promptly remit the final penalty imposed to the Secretary of Labor by either check or automated clearinghouse (ACH).

(b) If such remittance is not received within 30 days after it becomes due and payable, it may be recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary will be represented by the Solicitor of Labor.

Signed at Washington, DC, this 5th day of September 2023.

Christopher Godfrey,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2023–19422 Filed 9–11–23; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 140 and 146

46 CFR Parts 4 and 109

[Docket No. USCG–2013–1057]

RIN 1625–AB99

Marine Casualty Reporting on the Outer Continental Shelf

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking; extension of comment period.

SUMMARY: The Coast Guard is extending the comment period for the supplemental notice of proposed rulemaking, ''Marine Casualty Reporting on the Outer Continental Shelf,'' published June 14, 2023, that seeks comments on proposed changes to reporting criteria for certain casualties on the outer continental shelf (OCS) and a proposed increase to property damage dollar threshold that triggers a casualty report for fixed facilities on the OCS. We are extending the comment period an additional 60 days to allow the public more time to comment. The

comment period is now open through November 13, 2023.

DATES: The comment period for the supplemental notice of proposed rulemaking published June 14, 2023, (88 FR 38765) is extended. Comments and related material must be received by the Coast Guard on or before November 13, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2013–1057 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email LCDR Laura Fitzpatrick, Office of Investigations and Casualty Analysis (CG–INV), Coast Guard; telephone 202–372–1032, email *Laura.M.Fitzpatrick@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

We encourage you to submit comments through the Federal eRulemaking Portal at *www.regulations.gov.* If you cannot submit your material by using *www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

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

Background and Discussion

The Coast Guard issued a supplemental notice of proposed rulemaking (SNPRM) entitled ''Marine Casualty Reporting on the Outer Continental Shelf,'' on June 14, 2023 (88 FR 38765). In it we propose changing the reporting criteria for changing the reporting criteria for certain casualties that occur on foreign floating outer continental shelf (OCS) facilities (FOFs), mobile offshore drilling units (MODUs), and vessels engaged in OCS activities. In addition, the SNPRM proposes to raise the property damage dollar threshold that triggers a casualty report from $25,000 to $75,000 for fixed facilities on the OCS because the original regulation setting the property damage threshold amount was issued in the 1980s and has not since been updated. This SNPRM would update Coast Guard regulations to keep up with technology, improve awareness of accident trends on the OCS, improve safety on the OCS, and reduce the regulatory burden on operators of fixed OCS platforms.

We set a 90-day comment period for the SNRPM and received several requests to extend the comment period. The requesters cited need for additional time to provide constructive responses to the SNRPM and a lack of awareness about the SNPRM among members of the affected industry as reasons for the requested extension.

In response to this request, we decided to extend the public comment period by 60 days. The comment period is now open through November 13, 2023.

Dated: September 8, 2023.

W.R. Arguin,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2023–19811 Filed 9–11–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2023–0254; FRL–11283–01–OCSPP]

RIN 2070–ZA16

Pesticide Tolerances; Implementing Registration Review Decisions for Certain Pesticides (FY23Q4)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to implement several tolerance actions under the Federal Food, Drug, and Cosmetic Act (FFDCA) that the Agency determined were necessary or appropriate during the registration review conducted under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). During registration review, EPA reviews all aspects of a pesticide case, including existing tolerances, to ensure that the pesticide continues to meet the standard for registration under FIFRA. The tolerance actions and pesticide active ingredients addressed in this rulemaking are identified in Unit I.B. and discussed in detail in Unit III. of this document.

DATES: Comments must be received on or before November 13, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2023–0254, through the Federal eRulemaking Portal at: *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 instructions 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: Robert Little, Pesticide Re-Evaluation Division (7508M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–2234; email address: *little.robert@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

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

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

B. What action is the Agency taking?

EPA is proposing several tolerance actions that the Agency previously determined were necessary or

appropriate during registration review for the following pesticide active ingredients: chlorsulfuron, primisulfuron-methyl, triasulfuron, halosulfuron-methyl, sulfosulfuron, iodosulfuron-methyl-sodium, trifloxysulfuron-sodium, and mesosulfuron-methyl. The proposed tolerance actions for each pesticide active ingredient are described in Unit III. and may include but are not limited to the following types of actions:

- Revising tolerance expressions;
- Modifying commodity definitions;
- Updating crop groups;
- Removing expired tolerances;
- Revoking tolerances that are no longer needed; and
- Harmonizing tolerances with Codex Maximum Residue Levels (MRLs).

Although they may not have been identified in the registration review of a particular pesticide, this rule also includes proposals to reflect the Agency's 2019 adoption of the Organization of Economic Cooperation and Development (OECD) Rounding Class Practice. Where applicable, these adjustments are proposed for specific pesticides as reflected in the proposed regulatory text section.

C. What is EPA's authority for taking this action?

Pursuant to its authority under the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a, EPA is proposing the tolerance actions in this rulemaking that the Agency previously determined were necessary or appropriate during the registration review conducted under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq*.

FFDCA section 408(b) authorizes EPA to establish a tolerance, if the Agency determines that a tolerance is safe; FFDCA section 408(c) authorizes EPA to establish an exemption from the requirement of a tolerance if the Agency determines that the exemption is safe. *See* 21 U.S.C. 346a(b) and (c). If EPA determines that a tolerance or exemption is not safe, EPA must modify or revoke that tolerance or exemption. The FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' 21 U.S.C. 346a(b)(2)(A)(ii), (c)(2)(A)(ii). This includes exposure through drinking water and in residential settings but does not include occupational exposure. FFDCA section 408(b)(2)(C) requires EPA to give special consideration to the exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue[s.]'' 21 U.S.C. 346a(b)(2)(C). In addition, FFDCA section 408(b)(2)(D) contains several factors EPA must consider when making determinations about establishing, modifying, or revoking tolerances. 21 U.S.C. 346a(b)(2)(D). FFDCA section 408(c)(2)(B) requires that EPA, when making determinations about exemptions, to take into account, among other things, the considerations set forth in FFDCA section 408(b)(2)(C) and (D). 21 U.S.C. 346a(c)(2)(B).

FFDCA section 408(e), 21 U.S.C. 346a(e), authorizes EPA to establish, modify, or revoke tolerances or exemptions from the requirement of a tolerance on its own initiative. Prior to issuing the final regulation, FFDCA section 408(e)(2) requires EPA to issue a notice of proposed rulemaking for a 60-day public comment period, unless the Administrator for good cause finds that it would be in the public interest to have a shorter period and states the reasons in the rulemaking.

Furthermore, when establishing tolerances or exemptions from the requirement of a tolerance, FFDCA sections 408(b)(3) and (c)(3) require that there be a practical method for detecting and measuring pesticide chemical residue levels in or on food, unless in the case of exemptions, EPA determines that such method is not needed and states the reasons therefor in the rulemaking. 21 U.S.C. 346a(b) and (c).

Under FIFRA section 3(g), 7 U.S.C. 136a(g), EPA is required to periodically review all registered pesticides and determine if those pesticides continue to meet the standard for registration under FIFRA. *See also* 40 CFR 155.40(a). Consistent with its obligations under FIFRA section 3(g) and FFDCA section 408, EPA has reviewed the available scientific data and other relevant information and determined it is appropriate to take the tolerance actions being proposed in this rulemaking.

D. What can I do if I want the Agency to maintain a tolerance that the Agency proposes to revoke?

This proposed rule provides a 60-day public comment period that allows any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives such a comment within the 60-day period, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f), if needed. The order would specify data needed and the timeframes for submission of the data and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

After considering comments that are received in response to this proposed rule, EPA will issue a final rule. At the time of the final rule, you may file an objection or request a hearing on the action taken in the final rule. If you fail to file an objection to the final rule within the time period specified in the final rule, you will have waived the right to raise any issues resolved in the final rule. After the filing deadline specified in the final rule, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *https://www.regulations.gov* or email. If you wish to include CBI in your comment, please follow the applicable instructions at *https://www.epa.gov/dockets/commenting-epa-dockets#rules* and clearly mark the part or all of the information that you claim to be CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.regulations.gov/faq.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies.

II. Background

A. What is a tolerance?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on food, which includes raw agricultural commodities and processed foods and

feed for animals. Under the FFDCA, residues of a pesticide chemical that are not covered by a tolerance or exemption from the requirement of a tolerance are considered unsafe. *See* 21 U.S.C. 346a(a)(1). Foods containing unsafe residues are deemed adulterated and may not be distributed in interstate commerce. *See* 21 U.S.C. 331(a), 342(a)(2)(B). Consequently, for a food-use pesticide (*i.e.,* a pesticide use that is likely to result in residues in or on food) to be sold and distributed, the pesticide must not only have appropriate tolerances or exemptions under the FFDCA, but also must be registered under FIFRA, 7 U.S.C. 136 *et seq.* Food-use pesticides not registered in the United States must have tolerances or exemptions in order for commodities treated with those pesticides to be imported into the United States. For additional information about tolerances, go to *https://www.epa.gov/pesticide-tolerances/about-pesticide-tolerances.*

B. Why does EPA consider international residue limits?

When establishing a tolerance for residues of a pesticide, EPA must determine whether the Codex Alimentarius Commission (Codex) has established a Maximum Residue Limit (MRL) for that pesticide. *See* 21 U.S.C. 346a(b)(4). As part of registration review, EPA determines whether international tolerances or MRLs exist for commodities and chemicals for which U.S. tolerances have been established. Where appropriate, EPA's intention is to harmonize U.S. tolerances with those international MRLs to facilitate trade. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of the individual human health risk assessments that support the pesticide registration review.

C. What is pesticide registration review?

EPA periodically reviews existing registered pesticides to ensure they can continue to be used without unreasonable adverse effects on human health or the environment. The registration review program is intended to make sure that, as the ability to assess risk evolves and as policies and practices change, all registered pesticides continue to meet the FIFRA registration standard of no unreasonable adverse effects. As part of the registration review of a pesticide, EPA also evaluates whether existing tolerances are safe, whether any changes to existing tolerances are necessary or appropriate, and whether any new tolerances are necessary to cover residues from registered pesticides. Where appropriate, EPA has included a safety finding under the FFDCA for the proposed tolerance action for the pesticide, which is discussed in detail in the human health risk assessments conducted to support the registration review of each specific pesticide active ingredient or registration review case. In addition, these proposed tolerance changes are summarized in both the Proposed Interim Decision (PID), and in the Interim Decision (ID) for each pesticide active ingredient or registration review case. These documents can be found in the public docket that has been opened for each pesticide, which is available online at *https://www.regulations.gov,* using the docket ID number listed in Unit III. for each pesticide active ingredient included in this proposed action. Additional information about pesticide registration review is available at *https://www.epa.gov/pesticide-reevaluation.*

III. Proposed Tolerance Actions

EPA is proposing to take the specific tolerance actions identified in this unit.

A. 40 CFR 180.405; Chlorsulfuron; Case 0631 (Docket ID No. EPA–HQ–OPP–2012–0878)

1. Proposed Changes to the Current Tolerances

EPA is proposing to amend the current tolerances by:

- Revising the tolerance expression for chlorsulfuron to describe more clearly the scope or coverage of the tolerances and the method for measuring compliance. Consistent with EPA policy, the revised tolerance expression would clarify that (1) as provided in FFDCA section 408(a)(3), the tolerances cover metabolites and degradates of chlorsulfuron not specifically mentioned; and (2) compliance with the specified tolerance levels is to be determined by measuring the specific compounds mentioned in the tolerance expression. The revisions to the tolerance expression would not substantively change the tolerances or, in any way, modify the permissible level of residues permitted by the tolerances.
- Merging the established tolerances into a single paragraph for clarity.
- Modifying tolerance values or tolerance levels for ''Grass, forage''; ''Grass, hay''; ''Oat, forage''; and ''Wheat, forage'' to reflect current OECD rounding practices.

2. Safety Finding

During registration review, EPA assessed the risks from exposure to chlorsulfuron, taking into consideration all reliable data on toxicity and exposure, including for infants and children. Based on the supporting risk assessments and registration review documents, which demonstrate that the aggregate exposure is below the Agency's level of concern, EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to chlorsulfuron residues. Thus, EPA has determined that the tolerances for residues of chlorsulfuron are safe. Adequate enforcement methodology as described in the supporting documents is available to enforce the tolerance expression. For further detail, see *Chlorsulfuron. Draft Human Health Risk Assessment in Support of Registration Review,* which can be found in the docket ID number listed in the heading of this unit.

B. 40 CFR 180.452; Primisulfuron-methyl; Case 7220 (Docket ID No. EPA–HQ–OPP–2011–0844)

1. Proposed Changes to the Current Tolerances

EPA is proposing to amend the current tolerances by:

- Revising the tolerance expression for primisulfuron-methyl to describe more clearly the scope or coverage of the tolerances and the method for measuring compliance. Consistent with EPA policy, the revised tolerance expression would clarify that (1) as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of primisulfuron-methyl not specifically mentioned; and (2) compliance with the specified tolerance levels is to be determined by measuring the specific compounds mentioned in the tolerance expression. The revisions to the tolerance expression would not substantively change the tolerances or, in any way, modify the permissible level of residues permitted by the tolerances.

2. Safety finding

EPA has determined that the proposed change to the tolerance expression would not impact EPA's previous safety findings for the established tolerances for primisulfuron-methyl, because the change has no substantive effect on the tolerances or supporting risk assessments, but rather is merely intended to clarify the existing tolerance expression. For further detail, see *Primisulfuron-Methyl. Human Health Draft Risk Assessment for Registration Review,* which can be found in the

docket ID number listed in the heading of this unit.

C. 40 CFR 180.459; Triasulfuron; Case 7221 (Docket ID No. EPA–HQ–OPP–2012–0115)

1. Proposed Changes to the Current Tolerances

EPA is proposing to amend the current tolerances by:

• Revising the tolerance expression for triasulfuron to describe more clearly the scope or coverage of the tolerances and the method for measuring compliance. Consistent with EPA policy, the revised tolerance expression would clarify that (1) as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of triasulfuron not specifically mentioned; and (2) compliance with the specified tolerance levels is to be determined by measuring the specific compounds mentioned in the tolerance expression. The revisions to the tolerance expression would not substantively change the tolerances or, in any way, modify the permissible level of residues permitted by the tolerances.

2. Safety Finding

EPA has determined that the proposed change to the tolerance expression would not impact EPA's previous safety findings for the established tolerances for triasulfuron, because the change has no substantive effect on the tolerances or supporting risk assessments, but rather is merely intended to clarify the existing tolerance expression. For further detail, see *Triasulfuron. Draft Human Health Risk Assessment in Support of Registration Review,* which can be found in the docket ID number listed in the heading of this unit.

D. 40 CFR 180.479; Halosulfuron-methyl; Case 7233 (Docket ID No. EPA–HQ–OPP–2011–0745)

1. Proposed Changes to the Current Tolerances

EPA is proposing to amend the current tolerances by:

• Modifying the tolerance level for residues of halosulfuron-methyl in or on asparagus from 0.8 ppm to 1 ppm to harmonize with the Canadian MRL. There are no Codex MRLs for this pesticide chemical.

• Converting the existing crop group tolerances for ''vegetable, fruiting, group 8'' and ''nut, tree, crop group 14'' to the updated crop group tolerances for ''vegetable, fruiting, group 8–10'' and ''nut, tree, crop group 14–12,'' respectively. The tolerance levels would remain the same. 40 CFR 180.40(j) states that ''[a]t appropriate times, EPA will amend tolerances for crop groups that have been superseded by revised crop groups to conform the pre-existing crop group to the revised crop group.'' EPA has indicated in updates to its crop group rulemakings that registration review is one of those appropriate times. *See, e.g.,* Tolerance Crop Grouping Program V (85 FR 70976) (November 6, 2020).

• Removing tolerances for residues of halosulfuron-methyl in or on certain commodities. Specifically, EPA is proposing to remove the tolerance for ''pea and bean, succulent shelled, subgroup 6'' because it is an incorrect entry; no such crop subgroup exists. Instead, these commodities are covered under the established tolerance for ''pea and bean, succulent shelled, subgroup 6B'' at the same tolerance level. In addition, EPA proposes to remove tolerances for okra and pistachio as unnecessary, because they would be covered by the updated crop group tolerances for ''vegetable, fruiting, group 8–10'' and ''nut, tree, crop group 14–12,'' respectively, at the same tolerance levels.

2. Safety Finding

During registration review, EPA assessed the risks from exposure to halosulfuron-methyl, taking into consideration all reliable data on toxicity and exposure, including for infants and children. Based on the supporting risk assessments and registration review documents, which demonstrate that the aggregate exposure is below the Agency's level of concern, EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to halosulfuron-methyl residues. Thus, EPA has determined that the tolerances for residues of halosulfuron-methyl are safe. Adequate enforcement methodology as described in the supporting documents is available to enforce the tolerance expression. For further detail, see *Halosulfuron-Methyl. Draft Human Health Risk Assessment for Registration Review,* which can be found in the docket ID number listed in the heading of this unit.

E. 40 CFR 180.552; Sulfosulfuron; Case 7247 (Docket ID No. EPA–HQ–OPP–2011–0434)

1. Proposed Changes to the Current Tolerances

EPA is proposing to amend the current tolerances by:

• Revising the tolerance expression for sulfosulfuron to describe more clearly the scope or coverage of the tolerances and the method for measuring compliance. Consistent with EPA policy, the revised tolerance expression would clarify that (1) as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of sulfosulfuron not specifically mentioned; and (2) compliance with the specified tolerance levels is to be determined by measuring the specific compounds mentioned in the tolerance expression. The revisions to the tolerance expression do not substantively change the tolerances or, in any way, modify the permissible level of residues permitted by the tolerances.

• Removing the tolerances for residues of sulfosulfuron in or on hog, meat (0.005 ppm); hog, fat (0.005 ppm); and hog, meat byproducts (0.05 ppm). EPA has determined that there is no reasonable expectation of finite residues of concern in swine. See 40 CFR 180.6(a)(3). Moreover, a re-evaluation of tolerance enforcement methods determined that the limits of quantitation for these methods is 0.01 ppm.

2. Safety Finding

During registration review, EPA assessed the risks from exposure to sulfosulfuron, taking into consideration all reliable data on toxicity and exposure, including for infants and children. Based on the supporting risk assessments and registration review documents, which demonstrate that the aggregate exposure is below the Agency's level of concern, EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to sulfosulfuron residues. Thus, EPA has determined that the tolerances for residues of sulfosulfuron are safe. Adequate enforcement methodology as described in the supporting documents is available to enforce the tolerance expression. For further detail, see *Sulfosulfuron. Draft Human Health Risk Assessment in Support of Registration Review,* which can be found in the docket ID number listed in the heading of this unit.

F. 40 CFR 180.580; Iodosulfuron-methyl-sodium; Case 7253 (Docket ID No. EPA–HQ–OPP–2012–0717)

1. Proposed Changes to the Current Tolerances

EPA is proposing to amend the current tolerances by:

• Revising the tolerance expression for iodosulfuron-methyl-sodium to describe more clearly the scope or coverage of the tolerances and the method for measuring compliance. Consistent with EPA policy, the revised tolerance expression would clarify that (1) as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of iodosulfuron-methyl-sodium not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring the specific compounds mentioned in the tolerance expression. The revisions to the tolerance expression do not substantively change the tolerances or, in any way, modify the permissible level of residues permitted by the tolerances.

2. Safety Finding

EPA has determined that the proposed change to the tolerance expression would not impact EPA's previous safety findings for the established tolerances for iodosulfuron-methyl-sodium, because the change has no substantive effect on the tolerances or supporting risk assessments, but rather is merely intended to clarify the existing tolerance expression. For further detail, see *Iodosulfuron-Methyl-Sodium. Draft Human Health Risk Assessment in Support of Registration Review,* which can be found in the docket ID number listed in the heading of this unit.

G. 40 CFR 180.591; Trifloxysulfuron; Case 7028 (Docket ID No. EPA–HQ–OPP–2013–0409)

1. Proposed Changes to the Current Tolerances

EPA is proposing to amend the current tolerances by:

• Revising the tolerance expression for trifloxysulfuron, resulting from the application of its sodium salt, to describe more clearly the scope or coverage of the tolerances and the method for measuring compliance. Consistent with EPA policy, the revised tolerance expression would clarify that (1) as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of trifloxysulfuron not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring the specific compounds mentioned in the tolerance expression. The revisions to the tolerance expression do not substantively change the tolerances or, in any way, modify the permissible level of residues permitted by the tolerances.

• Revoking tolerances for residues of trifloxysulfuron in or on almond (0.02 ppm) and almond hulls (0.01 ppm). Almonds are no longer included as a use site on any trifloxysulfuron-sodium product labels; therefore, the Agency is proposing to revoke the established tolerances. In addition, to allow a reasonable interval for producers in exporting members of the World Trade Organization's (WTO's) Sanitary and Phytosanitary (SPS) Measures Agreement to adapt to these requirements in the final rule, EPA is proposing to amend the existing tolerances to include an expiration date that would be six months after the date of publication of the final rule in the **Federal Register**.

2. Safety Finding

During registration review, EPA assessed the risks from exposure to trifloxysulfuron-sodium, taking into consideration all reliable data on toxicity and exposure, including for infants and children. Based on the supporting risk assessments and registration review documents, which demonstrate that the aggregate exposure is below the Agency's level of concern, EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to trifloxysulfuron-sodium. Thus, EPA has determined that the tolerances for residues of trifloxysulfuron, resulting from the application of its sodium salt, are safe. Adequate enforcement methodology as described in the supporting documents is available to enforce the tolerance expression. For further detail, see *Trifloxysulfuron-Sodium. Draft Human Health Risk Assessment in Support of Registration Review,* which can be found in the docket ID number listed in the heading of this unit

H. 40 CFR 180.597; Mesosulfuron-Methyl; Case 7277 (Docket ID No. EPA–HQ–OPP–2012–0833)

1. Proposed Changes to the Current Tolerances

EPA is proposing to amend the current tolerances by:

• Revising the tolerance expression for mesosulfuron-methyl to describe more clearly the scope or coverage of the tolerances and the method for measuring compliance. Consistent with EPA policy, the revised tolerance expression would clarify that (1) as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of mesosulfuron-methyl not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring the specific compounds mentioned in the tolerance expression. The revisions to the tolerance expression do not substantively change the tolerances or, in any way, modify the permissible level of residues permitted by the tolerances.

2. Safety Finding

EPA has determined that the proposed change to the tolerance expression would not impact EPA's previous safety findings for the established tolerances for mesosulfuron-methyl, because the change has no substantive effect on the tolerances or supporting risk assessments, but rather is merely intended to clarify the existing tolerance expression. For further detail, see *Mesosulfuron-Methyl. Human Health Draft Risk Assessment for Registration Review,* which can be found in the docket ID number listed in heading of this unit.

IV. Proposed Effective Date

EPA is proposing that these tolerance actions would be effective on the date of publication of the final rule in the **Federal Register**. However, for actions in the final rule that lower or revoke existing tolerances, EPA is proposing an expiration date of six months after the date of publication of the final rule in the **Federal Register**, to allow a reasonable interval for producers in exporting members of the World Trade Organization's (WTO's) Sanitary and Phytosanitary (SPS) Measures Agreement to adapt to the requirements.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Orders 12866: Regulatory Planning and Review and 14094: Modernizing Regulatory Review

This action is exempt from review under Executive Order 12866 (58 FR 51735) (October 4, 1993), as amended by Executive Order 14094 (88 FR 21879) (April 11, 2023), because it proposes to establish or modify a pesticide tolerance or a tolerance exemption under FFDCA section 408. This exemption also applies to tolerance revocations for which extraordinary circumstances do not exist. As such, this exemption applies to the tolerance revocations in this proposed rule because the Agency knows of no extraordinary

circumstances that warrant reconsideration of this exemption for those proposed tolerance revocations.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA 44 U.S.C. 3501 *et seq.,* because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq*. In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the Agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule has no net burden on small entities subject to the rule. This determination takes into account an EPA analysis for tolerance establishments and modifications that published in the **Federal Register** of May 4, 1981 (46 FR 24950) (FRL–1809–5) and for tolerance revocations on December 17, 1997 (62 FR 66020) (FRL–5753–1).

Additionally, in a 2001 memorandum, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. *See* Memorandum from Denise Keehner, Division Director, Biological and Economic Analysis Division, Office of Pesticide Programs, entitled ''RFA/SBREFA Certification for Import Tolerance Revocation'' and dated May 25, 2001, which is available in the docket.

For the pesticides named in this proposed rule, EPA concludes that there is no reasonable expectation that residues of the pesticides for tolerances listed in this proposed rule for revocation will be found on the commodities discussed in this proposed rule, and the Agency knows of no extraordinary circumstances that exist as to the present proposed rule that would change EPA's previous analyses.

Any comments about the Agency's determination for this rulemaking should be submitted to EPA along with comments on the proposed rule and will be addressed in the final rule.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255) (August 10, 1999), because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249) (November 9, 2000), because it will not have substantial direct effects on tribal governments, 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.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885) (April 23, 1997) directs federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because it is not a significant regulatory action under section 3(f)(1) of Executive Order 12866 (See Unit V.A.), and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. However, EPA's *Policy on Children's Health* applies to this action.

This rule proposes tolerance actions under the FFDCA, which requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . .'' (FFDCA 408(b)(2)(C)). Consistent with FFDCA section 408(b)(2)(D), and the factors specified therein, EPA has reviewed the available scientific data and other relevant information in support of these proposed tolerance actions. The Agency's consideration is documented in the pesticide specific registration review decision documents. See the pesticide specific discussions in Unit III. and access the chemical specific registration review documents in each chemical docket at *https://www.regulations.gov.*

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 (66 FR 28355) (May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act (NTTAA)

This action does not involve technical standards under the NTTAA section 12(d), 15 U.S.C. 272.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629) (February 16, 1994) directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or indigenous peoples) and low-income populations. As discussed in more detail in the pesticide specific risk assessments conducted as part of the registration review for each pesticide as identified in Unit III., EPA has considered the safety risks for the pesticides subject to this rulemaking and in the context of the tolerance actions set out in this rulemaking. EPA believes that the human health and environmental conditions that exist prior to this action do not result in disproportionate and adverse effects on people of color, low-income populations, and/or indigenous peoples. Furthermore, EPA believes that this action is not likely to result in new disproportionate and adverse effects on people of color, low-income populations and/or indigenous peoples.

List of Subjects in 40 CFR Part 180

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

Dated: August 31, 2023.

Edward Messina,

Director, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, it is proposed that 40 CFR chapter I be amended as follows:

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

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

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

■ 2. Amend § 180.405 by revising paragraph (a)(1) to read as follows:

§ 180.405 Chlorsulfuron; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of chlorsulfuron, including its metabolites and degradates, in or on the commodities in table 1 to this paragraph (a)(1). Compliance with the tolerance levels specified in table 1 is to be determined by measuring only chlorsulfuron (2-chloro-N-[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]benzenesulfonamide) in or on the commodity.

TABLE 1 TO PARAGRAPH (a)(1)

Commodity	Parts per million
Barley, grain	0.1
Barley, straw	0.5
Cattle, fat	0.3
Cattle, meat	0.3
Cattle, meat byproducts	0.3
Goat, fat	0.3
Goat, meat	0.3
Goat, meat byproducts	0.3
Grass, forage	11
Grass, hay	19
Hog, fat	0.3
Hog, meat	0.3
Hog, meat byproducts	0.3
Horse, fat	0.3
Horse, meat	0.3
Horse, meat byproducts	0.3
Milk	0.1
Oat, forage	20
Oat, grain	0.1
Oat, straw	0.5
Sheep, fat	0.3
Sheep, meat	0.3
Sheep, meat byproducts	0.3
Wheat, forage	20
Wheat, grain	0.1
Wheat, straw	0.5

* * * * *

■ 3. Amend § 180.452 by:

■ a. Revising paragraph (a) introductory text, and

■ b. Adding table heading ''Table 1 to Paragraph (a)''.

The revision reads as follows:

§ 180.452 Primisulfuron-methyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of primisulfuron-methyl, including its metabolites and degradates, in or on the commodities in table 1 to this paragraph (a). Compliance with the tolerance levels specified in table 1 is to be determined by measuring only primisulfuron-methyl (methyl 2-[[[[[4,6-bis(difluoromethoxy)-2-pyrimidinyl)amino] carbonyl]amino]sulfonyl]benzoate) in or on the commodity.

* * * * *

■ 4. Amend § 180.459 by:

■ a. Revising paragraph (a) introductory text; and

■ b. Adding table heading ''Table 1 to Paragraph (a)''.

The revision reads as follows:

§ 180.459 Triasulfuron; tolerances for residues.

(a) *General.* Tolerances are established for residues of triasulfuron, including its metabolites and degradates, in or on the commodities in table 1 to this paragraph (a). Compliance with the tolerance levels specified in table 1 is to be determined by measuring only triasulfuron (2-(2-chloroethoxy)-N-[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]benzenesulfonamide) in or on the commodity.

* * * * *

■ 5. Amend § 180.479, paragraph (a) by:

■ a. Adding table heading ''Table 1 to Paragraph (a)'' in paragraph (a)(1);

■ b. In the Table in paragraph (a)(2):

■ i. Adding table heading ''Table 2 to Paragraph (a)'';

■ ii. Revising the entry ''Asparagus'';

■ iii. Adding in alphabetical order the entry ''Nut, tree, group 14–12'';

■ iv. Removing the entries ''Okra''; ''Pea and bean, succulent shelled, subgroup 6'', ''Pistachio'', and ''Vegetable, fruiting, group 8''; and

■ v. Adding in alphabetical order the entry ''Vegetable, fruiting, group 8–10''.

The revisions and additions read as follows:

§ 180.479 Halosulfuron-methyl; tolerances for residues.

(2) * * *

TABLE 2 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * *	
Asparagus	1
* * * * *	
Nut, tree, group 14–12	0.05
* * * * *	
Vegetable, fruiting, group 8–10	0.05

* * * * *

■ 6. Amend § 180.552 by:

■ a. Revising paragraph (a) introductory text;

■ b. Adding the table heading ''Table 1 to Paragraph (a)'' in paragraph (a)(1); and

■ c. Removing in Table 1 the entries ''Hog, fat''; ''Hog, meat''; and ''Hog, meat byproducts''.

The revision reads as follows:

§ 180.552 Sulfosulfuron; tolerances for residues.

(a) *General.* Tolerances are established for residues of sulfosulfuron (N-[[(4,6-dimethoxy-2-pyrimidinyl)amino]carbonyl]-2-(ethylsulfonyl)imidazo[1,2-a]pyridine-3-sulfonamide), including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only those sulfosulfuron residues convertible to 2-(ethylsulfonyl)-imidazo[1,2-a]pyridine, expressed as the stoichiometric equivalent of sulfosulfuron.

* * * * *

■ 7. Amend § 180.580 by:

■ a. Revising paragraph (a) introductory text; and

■ b. Adding table heading ''Table 1 to Paragraph (a)'' in paragraph (a)(1).

The revision reads as follows:

§ 180.580 Iodosulfuron-Methyl-sodium; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide iodosulfuron-methyl-sodium, including its metabolites and degradates, in or on the commodities listed in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only iodosulfuron-methyl-sodium (methyl 4-iodo-2-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2- yl)amino] carbonyl]amino]sulfonyl] benzoate, sodium salt), calculated as the stoichiometric equivalent of

iodosulfuron-methyl-sodium, in or on the commodity.

* * * * *

■ 8. Amend § 180.591 by:

■ a. Revising paragraph (a) introductory text;

■ b. Adding table heading ''Table 1 to Paragraph (a)'' in paragraph (a)(1);

■ c. Revising in Table 1 the entries ''Almond'' and ''Almond, hulls''; and

■ d. Adding footnote 1 to Table 1.

The revisions and additions read as follows:

§ 180.591 Trifloxysulfuron; tolerances for residues.

(a) *General.* Tolerances are established for residues of trifloxysulfuron, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only trifloxysulfuron, N-[[(4,6-dimethoxy-2-pyrimidinyl)amino]carbonyl]-3-(2,2,2-trifluoroethoxy)-2-pyridinesulfonamide.

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
Almond [1]	0.02
Almond, hulls[1]	0.01
* * * * *	

[1] These tolerances expire on [DATE 6 MONTHS AFTER DATE OF PUBLICATION IN THE **Federal Register**].

* * * * *

■ 9. Amend § 180.597 by:

■ a. Revising paragraph (a) introductory text; and

■ b. Adding table heading ''Table 1 to Paragraph (a)'' in paragraph (a)(1).

The revision reads as follows:

§ 180.597 Mesosulfuron-methyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of mesosulfuron-methyl, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only mesosulfuron-methyl, methyl 2-[[[[(4,6-dimethoxy-2-pyrimidinyl)amino]carbonyl]amino]sulfonyl]-4-[[(methylsulfonyl)amino]methyl]benzoate.

* * * * *

[FR Doc. 2023–19513 Filed 9–11–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2023–0069; FRL–10579–07–OCSPP]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities (July 2023)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petition and request for comment.

SUMMARY: This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before October 12, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2023–0069, through the *Federal eRulemaking Portal* at *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 instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Madison Le, Biopesticides and Pollution Prevention Division (BPPD) (7511M), main telephone number: (202) 566–1400, email address: *BPPDFRNotices@epa.gov.* The mailing address for each contact person is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the

pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available at *https://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

A. Notice of Filing—New Tolerance Exemptions for Inerts (Except PIPS)

PP IN–11632. EPA–HQ–OPP–2021–0866. Technology Sciences Group Inc. (1150 18th Street NW, Suite 475, Washington, DC 20036) on behalf of LANXESS Corporation (111 RIDC Park West Drive, Pittsburgh, PA 15275) requests to amend an exemption from the requirements of a tolerance for residues of tris (2-ethylhexyl) phosphate (CAS Reg. No. 78–42–2) for use as an inert ingredient (adjuvant that functions as a solvent or surfactant) in or on raw agricultural commodities in 40 CFR 180.1274 by adding its use with herbicide active ingredients on the following crops: Cereals (barley, wheat and corn); soybeans; pulses (dry beans, peas and lentils); cottonseed (cotton) and rapeseed (canola). The concentration of tris (2-ethylhexyl) phosphate will be limited to 22% by weight in the final pesticide formulation, except when used with active ingredients listed in 40 CFR 180.1274(b). The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

B. Notice of Filing—New Tolerances for Non-Inerts

1. *PP 1F8976.* EPA–HQ–OPP–2022–0455. UPL Delaware Inc. and UPL NA, Inc. 630 Freedom Business Center, Suite 402 King of Prussia, PA 19406, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide carboxin in or on crop subgroup 6–22E; dried shelled bean, except soybean, and 6–22F; pulses, dried shelled pea at .2 parts per million (ppm) and pea, dry, forage at 0.4 ppm and pea, dry, hay at 2 ppm. The GLC/MSD method and the Colorimetric Method is used to measure and evaluate the chemical carboxin. *Contact:* RD.

2. *PP 3E9048.* EPA–HQ–OPP–2023–0397. Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro, NC 27419–8300, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide. Mefenoxam in or on palm oil at .02 ppm. The Link K (2016) Metalaxyl—Analytical Method GRM075.01A for the Determination of Residues of Metalaxyl and Structurally Related Metabolites as Common Moiety 2,6-Dimethylaniline (CGA72649) in Crops with EAG method modifications is used to measure and evaluate the chemical mefenoxam. *Contact:* RD.

3. *PP 3F9056.* EPA–HQ–OPP–2023–0258. Cheminova, A/S, wholly owned by FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104, requests to establish tolerances in 40 CFR part 180.629 for residues of the fungicide, flutriafol in or on crop subgroup 1B; root vegetables (except sugar beet) at 0.3 ppm; crop subgroup 1C; tuberous and corm vegetables at 0.07 ppm; sugarcane at 0.3 ppm; and to establish tolerances for inadvertent or indirect residues of flutriafol in crop subgroup 3–07A; onion, bulb at 0.1 ppm; crop subgroup 3–07B; onion, green at 4 ppm; crop group 6–22; legume vegetables (except soybean) at 0.03 ppm; crop subgroup 20A; rapeseed at 0.7 ppm; crop subgroup 20B; sunflower at 0.015 ppm; clover, forage at 2 ppm; clover, hay at 3 ppm. The analytical method gas chromatography (GC) employing mass selective (MSD) detection and or HPLC/UPLC employing tandem mass spectrometric (MS/MS) detection is used to measure and evaluate the chemical flutriafol. *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: September 5, 2023.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2023–19689 Filed 9–11–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[BLM_WY_FRN_MO4500173295]

Notice of Proposed Supplementary Rule for Public Lands in Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rule.

SUMMARY: The Bureau of Land Management (BLM) is proposing a supplementary rule to protect natural resources and provide for public health and safety. The proposed supplementary rule would apply to all public lands and BLM facilities in Wyoming.

DATES: You should submit your comments by November 13, 2023.

ADDRESSES: You may submit comments by the following methods: Mail or hand deliver to Deborah Sullivan, State Chief Ranger, BLM Wyoming State Office, 5353 Yellowstone Rd., Cheyenne, WY 82009. You may also submit comments via email to *dsullivan@blm.gov* (include ''Proposed Supplementary Rule'' in the subject line).

FOR FURTHER INFORMATION CONTACT: Deborah Sullivan, State Chief Ranger (see address listed above), by phone at (307) 775–6268, or email at *dsullivan@blm.gov*. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Sullivan. 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:

I. Public Comment Procedures

Written comments on the proposed supplementary rule should be specific, be confined to issues pertinent to the proposed supplementary rule, and explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposed supplementary rule that the comment is addressing. The BLM is not obligated to consider or include in the Administrative Record for the final supplementary rule comments the BLM receives after the close of the comment period (see **DATES**) unless they are postmarked or electronically dated before the deadline, or comments

delivered to an address other than one of the addresses listed above (see **ADDRESSES**).

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at the address listed above, during regular business hours (7:30 a.m. to 4:30 p.m., Monday through Friday, except on Federal holidays). 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 we will be able to do so.

II. Background

BLM state offices have issued various statewide supplementary rules to protect natural resources and provide for public health and safety. Individual BLM field offices have also issued various supplementary rules for travel management, protection of natural resources, and public health and safety.

III. Discussion of the Proposed Supplementary Rule

This proposed supplementary rule would apply to all public lands in Wyoming. Proposed supplementary rule numbers 1 and 2 address general public conduct on public lands. Proposed supplementary rule numbers 3 through 7 address resource damage and public safety concerns involving the use of exploding targets, flammable devices, and target shooting. Proposed supplementary rule numbers 8 and 9 address the possession or use of alcohol on public lands. Proposed supplementary rule number 10 addresses the possession of drug paraphernalia in violation of state law. Proposed supplementary rule number 11 requires trailers on public land to have current registration. Proposed supplementary rule number 12 adopts Wyoming Revised Statutes regarding hunting, fishing, boating, and outfitters. Proposed supplementary rule number 13 further clarifies existing Federal regulations found in 43 CFR 9264.1(h) relating to vehicles, game animals, boating, and river outfitters.

Proposed supplementary rule number 14 addresses the burning of wood pallets containing nails or staples on public land. Campsites in popular areas on public land are used repeatedly throughout the spring, summer, and fall. As use increases, the availability of firewood decreases, leading more campers to bring construction debris or wood pallets with nails or staples in them to use as firewood. The nails and staples end up in campfire ash left at the campsite. In an effort to return campsites to a more primitive condition, many campers scatter ashes and rock rings before leaving their campsite. The nails or staples end up on the ground surface, causing flat tires. Proposed supplementary rule number 14 would reduce the risk of tire damage from discarded nails and staples in popular camping areas.

Proposed supplementary rule numbers 15 and 16 address impacts to wild horses from increased visitation, photography, and tours within their natural habitat. Wild horses can lose their wariness of humans due to acclimation with, close proximity to, and feeding by humans; this results in an increased likelihood of injury to a visitor or to a wild horse.

The proposed supplementary rule is in conformance with the following resource management plans (RMPs), as amended:

- Rock Springs RMP (''Green River RMP'') (1997)
- Newcastle Field Office RMP (2000)
- Casper Field Office RMP (2007)
- Pinedale Field Office RMP (2008)
- Snake River RMP (2004)
- Rawlins Field Office RMP (2008)
- Kemmerer Field Office RMP (2010)
- Lander Field Office RMP (2014)
- Buffalo Field Office RMP (2015)
- Bighorn Basin RMP—Cody Field Office (2015)
- Bighorn Basin RMP—Worland Field Office (2015)

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

The proposed supplementary rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order (E.O.) 12866, as amended by E.O. 14094. It does not have an annual effect of $200 million or more on the economy. It does not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. It does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. It does not materially alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights or obligations of their recipients, nor does it raise novel legal or policy issues. The proposed supplementary rule merely establishes conduct for public use of a limited area of public lands.

National Environmental Policy Act (NEPA)

The BLM has found that the proposed supplementary rule comprises a category or kind of action that has no significant individual or cumulative effect on the quality of the human environment. See 40 CFR 1508.4; 43 CFR 26.210. Specifically, the promulgation of the proposed supplementary rule—which prohibits violating existing state laws or engaging in activities that fall within 43 CFR 8365.1–4's general prohibition on creating a hazard or nuisance—is an action that is of an administrative, financial, legal, technical, or procedural nature within the meaning of 43 CFR 26.210(i), and none of the extraordinary circumstances listed at 43 CFR 26.215 are applicable.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This proposed supplementary rule merely establishes conduct for public use of a limited area of public lands. Therefore, the BLM has determined under the RFA that the proposed supplementary rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

The proposed supplementary rule is not considered a 'major rule' as defined under 5 U.S.C. 804(2). The proposed supplementary rule merely establishes conduct for public use of a limited area of public lands and does not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

The proposed supplementary rule will not impose an unfunded mandate on State, local, or Tribal governments in the aggregate, or the private sector, of more than $100 million per year, nor will it have a significant or unique effect on small governments. The proposed supplementary rule will have no effect on governmental or Tribal entities and will impose no requirements on any of

these entities. The proposed supplementary rule merely establishes conduct for public use of a limited area of public lands and does not affect Tribal, commercial, or business activities of any kind. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed supplementary rule is not a government action capable of interfering with constitutionally protected property rights. The proposed supplementary rule does not address property rights in any form and would not cause the impairment of constitutionally protected property rights. Therefore, the BLM has determined that the proposed supplementary rule will not cause a ''taking'' of private property or require further discussion of takings implications under this Executive order.

Executive Order 13132, Federalism

The proposed supplementary rule would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the BLM has determined that this proposed supplementary rule will not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that this proposed supplementary rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that this proposed supplementary rule does not include policies that have Tribal implications and would have no bearing on trust lands, lands for which title is held in fee status by Indian Tribes, or U.S. Government-owned lands managed by the Bureau of Indian Affairs.

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

This proposed supplementary rule does not constitute a significant energy action. This proposed supplementary rule would not have an adverse effect on energy supply, production, or consumption and has no connection with energy policy.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that the proposed supplementary rule would not impede facilitating cooperative conservation; would take appropriate account of and consider the interests of persons with ownership or other legally recognized interests in land or other natural resources; would properly accommodate local participation in the Federal decision-making process; and would provide that the programs, projects, and activities are consistent with protecting public health and safety.

Paperwork Reduction Act

This proposed supplementary rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

Author

The principal author of this proposed supplementary rule is Deborah Sullivan, State Chief Ranger, BLM Wyoming State Office.

V. Proposed Rule

For the reasons stated in the Preamble and under the authority of 43 U.S.C. 1733(a), and 1740, and 43 CFR 8365.1–6, the BLM Wyoming State Director proposes a supplementary rule for public lands and BLM facilities in Wyoming, to read as follows:

Supplementary Rule for Public Lands in Wyoming

Definitions

Alcoholic beverage means a beverage as defined in W.S. 12–1–101(a)(i).

Disorderly conduct means ''breach of peace.''

A person commits breach of peace as defined by W.S. 6–6–102 if s/he disturbs the peace of a community or its inhabitants by unreasonable loud noise or music or by using threatening, abusive, or obscene language or violent actions with knowledge or probable cause s/he will disturb the peace.

Federal Officer means any Federal law enforcement officer.

Wild horse means all unbranded and unclaimed horses that use public lands as all or part of their habitat, that have been removed from these lands by an authorized officer, or that have been born of wild horses or burros in authorized BLM facilities, but have not lost their status under section 3 of the Wild and Free-Roaming Horses and Burros Act of 1971.

Open alcoholic beverage container means a bottle, can, or other receptacle that contains any amount of alcoholic beverage and:

(a) That is open or has a broken seal; or

(b) The contents of which are partially removed.

Passenger area means the area designed to seat the driver and passengers while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in his or her seating position, including but not limited to the glove compartment.

Public indecency has the same meaning as defined by W.S. 6–4–201.

Public land means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except (1) lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts, and Eskimos.

Prohibited Acts

Unless otherwise authorized, the following acts are prohibited on all public lands, roads, trails, facilities, or waterways administered by the BLM in Wyoming:

1. You must not engage in disorderly conduct.

2. You must not engage in public indecency.

3. You must not possess or discharge fireworks.

4. You must not possess, discharge, or use explosives, incendiary or chemical devices, or exploding targets, including but not limited to ammonium nitrate- and aluminum powder-based binary explosives.

5. All rifle and pistol target shooting activities shall be into a backstop of material that prevents further travel or ricochet of the bullet.

6. You must not shoot at materials other than paper or cardboard targets, biodegradable clay pigeons, or plastic and steel targets manufactured specifically for shooting sports. Shooting at electrical components such as televisions, computers, or computer

monitors; propane bottles; or glass containers is prohibited.

7. You must not possess, discharge, or use flammable devices, including but not limited to gasoline bombs commonly referred to as ''Sobe Bombs'' or flammable projectiles discharged from a launching tube or other device.

8. You must not drink an alcoholic beverage or possess an open alcoholic beverage container while in the passenger area of a motor vehicle, including off-highway vehicles.

9. You must not violate any State laws relating to the purchase, possession, use, or consumption of alcohol.

10. You must not possess any drug paraphernalia in violation of State law.

11. You must not tow or be in possession of a trailer requiring registration under Wyoming Revised Statues that is either unregistered or has an expired registration.

12. You must not violate any Wyoming Revised Statute regarding hunting, fishing, boating, or outfitters.

13. You must not violate any Federal or State laws or regulations concerning conservation or protection of natural resources or the environment, including but not limited to those relating to air and water quality, protection of fish and wildlife, plants, and the use of a chemical toxicant.

14. You must not burn wood pallets containing nails or staples.

15. You must not intentionally engage in any activity within any distance that disturbs, displaces, or otherwise interferes with the free unimpeded movement of wild horses.

16. You must not feed, water, or touch any wild horse.

Exceptions

The following persons are exempt from the supplementary rule: any Federal, State, local, or military employees or contractors acting within the scope of their official duties; members of any organized rescue or fire-fighting force performing an official duty; and persons who are expressly authorized or approved by the BLM.

Enforcement

Any person who violates this supplementary rule may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8560.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Wyoming law.

Andrew Archuleta,

BLM Wyoming State Director.

[FR Doc. 2023–19634 Filed 9–11–23; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

45 CFR Part 1324

RIN 0985–AA18

Adult Protective Services Functions and Grant Programs

AGENCY: Administration for Community Living (ACL), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administration for Community Living (ACL) within the Department of Health and Human Services (''the Department'' or HHS) is issuing this Notice of Proposed Rulemaking (NPRM) to modify the implementing regulations of the Older Americans Act of 1965 (''the Act'' or OAA) to add a new subpart (Subpart D) related to Adult Protective Services (APS).

DATES: To be assured consideration, comments must be received no later than November 13, 2023.

ADDRESSES: You may submit comments, including mass comment submissions, to this proposed rule, identified by RIN Number 0985–AA18, by any of the following methods:

- *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.
- *Regular, Express, or Overnight Mail:* You may mail written comments to the following address: Administration on Aging, Administration for Community Living, Department of Health and Human Services, Attention: Stephanie Whittier Eliason, 330 C Street SW, Washington, DC 20201.

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 may be posted without change to content to *https://www.regulations.gov* and can be retrieved by most internet search engines. No deletions, modifications, or redactions will be made to comments received.

We will consider all comments received or officially postmarked by the methods and due date specified above. Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to provide individual acknowledgements of receipt. Please allow sufficient time for mailed comments to be timely received in the event of delivery or security delays. Electronic comments with attachments should be in Microsoft Word or Portable Document Format (PDF).

Please note that comments submitted by fax or email, and those submitted or postmarked after the comment period, will not be accepted.

Inspection of Public Comments: All comments received before the close of the comment period will be available for viewing by the public, including personally identifiable or confidential business information that is included in a comment. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make. HHS 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.* Follow the search instructions on that website to view the public comments.

FOR FURTHER INFORMATION CONTACT: Stephanie Whittier Eliason, Team Lead, Office of Elder Justice and Adult Protective Services, Administration on Aging, Administration for Community Living, Department of Health and Human Services, 330 C Street SW, Washington, DC 20201. Email: *Stephanie.WhittierEliason@acl.hhs.gov,* Telephone: (202) 795–7467 or (TDD).

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: Upon request, the Department will provide an accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed regulations. To schedule an appointment for this type of accommodation or auxiliary aid, please call (202) 795–7467 or email *Stephanie.WhittierEliason@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

The Administration for Community Living (ACL) within the Department of Health and Human Services (HHS) is issuing this Notice of Proposed Rulemaking to modify 45 CFR part 1324 of the implementing regulations of the Older Americans Act of 1965 (OAA or ''the Act'') to add a new subpart (Subpart D). The proposed rules exercise ACL's authority to regulate Adult Protective Service (APS) systems under section 201 of the Act, 42 U.S.C. 3011(e)(3) and section 2042(a) of the Elder Justice Act (EJA), 42 U.S.C. 1397m–1(a). Currently, there are no Federal standards for APS systems, leading to wide variation in policies and procedures, thus resulting in inconsistent service delivery across States and confusion for APS systems and the general public, including victims of adult maltreatment. Historically, APS programs and administrators have lacked reliable information and guidance on best practices and standards for conducting case investigations and for staffing and managing APS programs. These challenges have impaired States' ability to respond in an effective and timely way to reports of adult maltreatment and to assess client outcomes and the effectiveness of the services they are providing. Nationally, this results in a fragmented and unequal system that can hinder coordination and lead to the absence of critical support for some people experiencing maltreatment. The proposed regulation will create a national standard to elevate evidence-informed practices, bring clarity and uniformity to programs, and improve the quality of service delivery for adult maltreatment victims and potential victims.

Adult maltreatment is associated with significant physical and mental health consequences as well as financial losses. Older adults and people with disabilities may also experience deteriorated family relationships, diminished autonomy, and institutionalization, all of which can impact quality of life.[1] Studies have found that at least one in ten community-dwelling older adults experienced some form of abuse in the prior year.[2] In addition, a recent systematic review that collected self-reports of abuse by residents found high levels of institutional abuse.[3]

APS programs often link adults subject to maltreatment to community social, physical health, behavioral health, and legal services which help them maintain independence in the settings they prefer to live. APS programs are also often the avenue through which adult maltreatment is reported to police or other agencies of the criminal justice system. As such, APS plays a critical role in the lives of adults more likely to be subjected to maltreatment, particularly older adults and adults with disabilities. APS programs receive and respond to reports of adult maltreatment, and work closely with clients and a wide variety of allied professionals to maximize safety and independence and provide a range of services to the people they serve, including:

- receiving and investigating reports of adult maltreatment;
- case planning, monitoring, evaluation, and other case work and services; and
- providing, arranging for, or facilitating the provision of medical, social service, economic, legal, housing, law enforcement, or other protective, emergency, or support services.

APS is a social and human services program. Working collaboratively and with the consent of the victim, APS caseworkers develop service plans and connect the victim to social, health, and human services. The focus of APS is entirely on assisting the victim to recover from the experience of maltreatment. As a social services program, the ''findings'' in an APS case are not legal determinations, either civil or criminal. Rather, if APS suspects that an act of maltreatment falls under a State's criminal statutes, APS will refer the case to law enforcement.

As discussed in greater detail in the *Statutory and Regulatory History and Reasons for the Proposed Rulemaking,* until 2021 APS systems were funded primarily through a variety of local and State resources. All States now accept Federal funding, including ACL funding, for their APS systems in addition to their State and local funding. However, there are currently no mandatory Federal standards governing APS policies, procedures, and practices, which results in a significant program variation across and within States and, in some cases, sub-standard quality according to APS staff and other community members.

In 2021, ACL fielded a survey (OMB Control No. 0985–0071) of 51 APS systems (the 50 States and the District of Columbia).[4] Results from that survey,

[1] Mengting Li & XinQi Dong, *Association Between Different Forms of Elder Mistreatment and Cognitive Change,* 33 J. of Aging and Health, 249 (2020), *https://pubmed.ncbi.nlm.nih.gov/33249977/ ; Russ Neuhart, Elder Abuse: Forensic, Legal and Medical Aspects*, 163 (Amy Carney ed., 2019); Rosemary B. Hughes et al, *The Relation of Abuse to Physical and Psychological Health in Adults with Developmental Disabilities,* 12 Disability and Health J., 227 (2019), *https://doi.org/10.1016/j.dhjo.2018.09.007;* Joy S. Ernst & Tina Maschi, *Trauma-Informed Care and Elder Abuse: A Synergistic Alliance.* 30 J. of Elder Abuse & Neglect, 354 (2018), *https://pubmed.ncbi.nlm.nih.gov/30132733/.*

[2] Ron Acierno et al., *Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study,* 100 Amer. J. of Pub. Health 292 (2010), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2804623/;* Andre Rosay & Carrie Mulford, *Prevalence Estimates & Correlates of Elder Abuse in the United States: The National Intimate Partner and Sexual Violence Survey,* 29(1) J. of Elder Abuse and Neglect, 1 (2017); E-Shien Chang & Becca R Levy, *High Prevalence of Elder Abuse During the COVID–19 Pandemic: Risk and Resilience Factors,* 29(11) Amer. J. of Geriatric Psychiatry (2021), *doi.org/10.1016/j.jagp.2021.01.007.https://pubmed.ncbi.nlm.nih.gov/27782784/#:~:text=More%20than%201%20in%2010,both%20intimate%20and%20nonintimate%20partners;* Yongjie Yon et al., *Elder Abuse Prevalence in Community Settings: A Systematic Review and Meta-analysis,* 5(2) Lancet Global Health 147 (2017); Furthermore, it is estimated that for every incident of abuse reported to authorities, nearly 24 additional cases remain undetected. *See* Jennifer Storey, *Risk Factors for Abuse and Neglect: A Review of the Literature,* 50 Aggression and Violent Behavior 101339 (2020), *https://www.sciencedirect.com/science/article/abs/pii/S1359178918303471.*

[3] Prevalence estimates for abuse subtypes reported by institutionalized older residents were highest for psychological abuse (33.4%), followed by physical (14.1%), financial (13.8%), neglect (11.6%), and sexual abuse (1.9%); Yongjie Yon et. al., *The Prevalence of Elder Abuse in Institutional Settings: A Systematic Review and Meta-Analysis,* 29 Eur. J. of Pub. Health 58 (2019).

[4] Adult Protective Services Technical Assistance Resource Center (2023). National Process Evaluation of the Adult Protective Services System. Submitted to the Administration for Community Living, U.S. Department of Health and Human Services. The U.S. Territories are not included in the analysis. Extant policy information was not available from the Territories, thus were not included in the APS Policy Review or APS Systems Outcomes Analysis. They were able to participate

along with an analysis of the 2020 National Adult Maltreatment Reporting System (NAMRS)[5] data, and collected policy profiles of APS in all States, the District of Columbia, and the Territories illustrate the wide variability across APS programs.[6]

As discussed in the *Definitions* section, an APS system is made up of both the State entity (*e.g.,* the department of health and human services) that receives State and Federal funding for APS, including ACL funding, and the local APS programs that provide adult protective services.[7] All APS systems are organized under a State government entity, with 20 systems located within a State Unit on Aging, 14 within a State division or department of social services (mostly responsible for child welfare), and 20 within some other State department or agency of health and human services.[8] Despite all States having a designated State office for APS, the degree to which the State entity controls and administers the APS systems varies across States. In 78 percent of APS systems, the State office sets program policy for, and conducts oversight of, the APS programs, and in 22 percent of States, the authority to set policy and conduct oversight rests in the local APS program in each county or service area.[9] In 70 percent of APS programs, State employees implement the APS program and conduct investigations; county and non-profit employees conduct investigations in the remaining 30 percent of programs.[10]

While the State entity establishes APS policy, conducts training, administers funding, and provides information technology infrastructure support to local APS programs in almost all APS systems,[11] 27 States have indicated the need for greater consistency in practice.[12] Specific obstacles identified included: lack of resources for oversight in general or quality assurance processes specifically, differing policy interpretations across local programs, and not enough supervisors.[13]

Eligibility for APS services varies dramatically across the States, Tribal Nations, and Territories. States use age and terms such as ''disability,'' ''dependency,'' or ''vulnerability'' to define the populations they serve.[14] In some States, being an older adult (some States set the age at 60 and older, others at 65 and older) is the only criterion for determining whom they serve; in others, eligibility is defined by a combination of age and ''disability,'' ''dependency,'' or ''vulnerability.'' States with programs that serve younger adults (age 18–59 or 18–64) always require ''disability,'' ''dependency,'' or ''vulnerability'' as a criterion.[15] However, despite eligibility being established at the State level, APS programs often triage which eligible cases they have the capacity to investigate based on numerous factors, including resources.

Responsibility for investigations involving residents in congregate residential facilities such as nursing facilities, assisted living facilities, and group homes varies across APS systems. Most APS systems investigate allegations of maltreatment that do not involve the facility or its staff, and a few APS programs investigate allegations involving the staff of the facility.[16] Eleven APS systems report they do not have authority to conduct investigations in congregate residential facilities.[17] Forty-two APS systems report they have authority to investigate allegations of abuse, neglect, or exploitation when they occur in congregate residential facilities.[18] Of those 42, 19 report the APS system has authority to conduct investigations in congregate residential facilities in all situations regardless of whether the alleged perpetrator is facility staff, visitor, or resident.[19] Twenty-three States report the APS system has authority to conduct investigations in some congregate residential settings depending on whether a staff person is the alleged perpetrator or not.[20]

In an effort to elevate uniform evidence-informed practices across APS programs, ACL issued Voluntary Consensus Guidelines for State APS Systems (Consensus Guidelines) in 2016, which were subsequently updated in 2020.[21] In developing the Consensus Guidelines, ACL applied Office of Management and Budget (OMB) and National Institutes of Standards and Technology (NIST) standards and processes for creating field-developed, consensus-driven guidelines.[22] The development of the 2016 Consensus Guidelines and its 2020 update

in the APS Practice Survey, and their data are included in internal survey results report to ACL.

[5] NAMRS is a data reporting system established and operated by ACL for the purpose of better understanding of adult maltreatment in the United States. The data collected is submitted by all APS programs in all states, the District of Columbia, and the Territories. NAMRS annually collects data on APS investigations of abuse, neglect and exploitation of older adults and adults with disabilities, as well as information on the administration of APS programs. The data provide an understanding of key program policies, characteristics of those experiencing and perpetrating maltreatment, information on the types of maltreatment investigated, and information on services to address the maltreatment. For more information, visit: The Admin. For Cmty. Living, *National Adult Maltreatment Reporting System, www.namrs.acl.gov* (last visited April 18, 2023).

[6] We refer to ''States'' in this proposed rule to encompass all fifty States, the District of Columbia, and the five Territories (American Samoa, Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and U.S. Virgin Islands).

[7] *See infra* note 24. In addition to ACL formula grants, States may receive Title XX Social Services Block Grant (SSBG) funding. However, States have discretion whether and how much of their SSBG funding they choose to allocate to APS. Not all States use SSBG funding for their APS systems.

[8] *See supra* note 4; Numbers sum to 54 because five Territories did not report data on their APS administrative structure. All fifty States and the District of Columbia reported data. Three States (Massachusetts, Louisiana, and Pennsylvania) have two separate APS systems, one program with eligibility based on age and a separate and distinct program with eligibility based on disability status. The two separate systems were counted in these States.

[9] *See supra* note 4 at 21.

[10] *See supra* note 4 at 20; Pennsylvania has used a for-profit entity due to a unique circumstance in the State related to the State's aging services structure. There are currently no for-profit APS entities.

[11] For example, 76 percent of APS programs indicate that their State exerts ''significant'' control over local APS operations. *See supra* note 4 at 20.

[12] *See supra* note 4 at 21.

[13] *Id.*

[14] We note eligibility is set in State statute. Discretion is exercised, however, on which eligible cases to accept—often based on resource constraints.

[15] *See supra* note 4. Specifically, 34 States serve adults (age 18 and older) with disabilities regardless of age. This is the largest eligibility category. Twelve States serve older adults (either age 60 and older or age 65 and older) regardless of disability status, and younger adults with a disability. Four States serve only older adults regardless of disability status. Two States serve only older adults with a disability. Two States have programs that only serve young adults with disabilities, and older adults are served by a different APS program within the State.

[16] *See supra* note 4.

[17] *See supra* note 4.

[18] *See supra* note 4.

[19] *See supra* note 4.

[20] *See supra* note 4.

[21] For detailed information on the development process for the 2016 and subsequent 2020 Consensus Guidelines, *see* The Admin. For Cmty. Living, Final National Voluntary Guidelines for State Adult Protective Services Systems (2016), *https://acl.gov/sites/default/files/programs/2017-03/APS-Guidelines-Document-2017.pdf* (last visited May, 16 2023); The Admin. For Cmty. Living, Voluntary Consensus Guidelines for State APS Systems (2020), *https://acl.gov/programs/elder-justice/final-voluntary-consensus-guidelines-state-aps-systems (last visited Apr. 18, 2023).*

[22] Off. Of Mgmt. & Budget, Exec. Off. Of the President, OMB Circular A–119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities, *https://www.nist.gov/system/files/revised_circular_a-119_as_of_01-22-2016.pdf*); National Technology Transfer and Advancement Act of 1995, Public Law No. 104–113, including amendment Utilization of consensus technical standards by Federal agencies, Public Law No. 107–107, § 1115 (2001), *https://www.nist.gov/standardsgov/national-technology-transfer-and-advancement-act-1995; The Admin. For Cmty. Living, Report on the Updates to the Voluntary Consensus Guidelines for APS Systems* (2020) *https://acl.gov/sites/default/files/programs/2020-05/ACL-Appendix_3.fin_508.pdf* (last visited May 9, 2023).

consisted of multiple steps. ACL performed a review of research available on promising practices in APS systems and in other analogous systems throughout the United States; convened a review group consisting of experts selected from the APS, the Long-Term Care Ombudsman, and disability rights communities; and engaged in an extensive and wide-reaching community engagement and outreach process. Through our community engagement process, we received input on an individual basis from a variety of sources, including the general public, the aging network, APS systems, the disability community, law enforcement, and others. We drafted our guidance based on the individual input we received.[23]

The Consensus Guidelines represent recommendations from the field based on experience and expertise serving adults and communities. These guidelines provide a core set of principles and common expectations to encourage consistency in practice, ensure adults are afforded similar protections and APS services regardless of locale, and support interdisciplinary and interagency coordination. These recommendations enhance effective, efficient, and culturally competent APS service delivery. While the Consensus Guidelines have been commended by APS systems and the APS community, they have yet to produce measurable change in APS systems or practice, and consistency and uniformity are still lacking across and within APS systems. Our recently published National Process Evaluation Report using 2021 data and ongoing NAMRS data collection bear out gaps between current State policy and practice and the recommendations contained in the Consensus Guidelines. We have received feedback from the APS community that because the Consensus Guidelines are voluntary recommendations and not regulatory requirements, their efficacy is limited.

These proposed rules are informed by the extensive research, analysis, community input, and recommendations of our Consensus Guidelines, as well as experience and information from our NAMRS data, and the 2021 51 State National Process Evaluation Report.[24]

[23] Individual input was received from the APS community, thus exempting the process from Federal Advisory Council Act requirements; 5 U.S.C. 1001 et. seq.

[24] *See supra* note 4.

II. Statutory and Regulatory History and Reasons for the Proposed Rulemaking

APS programs have historically been administered and primarily funded by States. They have been recognized in Federal law since 1974 when the Social Security Act was amended by the Social Services Amendments of 1974 (Pub. L. 93–647), 42 U.S.C. 1397a(a)(2)(A) to permit States to use Social Services Block Grant (SSBG) funding under Title XX for APS programming. However, while most States currently use SSBG funding for their APS programs, the amount of SSBG funding allocated to APS varies and the allocations can be very small.[25]

Through a series of legislative actions, Congress designated ACL as the Federal entity with primary responsibility for providing Federal policy leadership and program oversight for APS. This includes authority granted by the OAA to promulgate regulations, to oversee formula grants to State and Tribal APS programs, to enhance APS programs, to collect data to increase APS effectiveness, and to directly link the authorities of the EJA with those contained in the OAA.

Title VII of the OAA (Vulnerable Elder Rights Protection Activities), enacted in 1992, authorizes funding to States to address protections for vulnerable adults. Some activities are specifically identified to be conducted with Title VII funding. Section 201(e) of the OAA, 42 U.S.C. 3011(e) added in 2006, vests responsibility for a coordinated Federal and national response to elder justice issues broadly with the Assistant Secretary for Aging. ACL has rulemaking authority for elder justice activities by virtue of section 201(e)(3), 42 U.S.C. 3011(e)(3), which states, ''the Secretary, acting through the Assistant Secretary, may issue such regulations as may be necessary to carry out this subsection . . .'' and specifically references the responsibility of the Assistant Secretary for elder abuse prevention and services, detection, treatment and response in coordination with heads of State APS programs. Section 2042(b) of the EJA, 42 U.S.C. 1397m–1, establishes an APS grant program under which the Secretary annually awards grants to States. The Secretary of HHS has designated ACL as the grant-making agency for APS. Coupled together, the EJA and OAA provide the Assistant Secretary with broad authority to coordinate, regulate, and fund State APS systems.

Through the enactment of the EJA in 2010, Congress again recognized the need for a more coordinated national elder justice and APS system. The EJA creates a national structure to promote research and technical assistance to support Federal, State, and local elder justice efforts, as well as authorization for dedicated APS funding. A component of the EJA is specifically designed to address the need for better Federal leadership. The Federal Elder Justice Coordinating Council (EJCC) is established by the EJA [26] to coordinate activities across the Federal Government that are related to elder abuse, neglect, and exploitation. The EJA designates the Secretary of HHS to chair the EJCC, and continually since the establishment of the EJCC in 2012, the HHS Secretary has designated that responsibility to the Assistant Secretary for Aging and Administrator of ACL. Under the chairmanship of the Assistant Secretary for Aging, and since its establishment, the EJCC has met regularly, soliciting input from the APS community—ranging from individual citizens to expert practitioners and industry associations—on identifying and proposing solutions to the problems surrounding elder abuse, neglect, and financial exploitation, including for strengthening national support for APS.[27]

Since Fiscal Year (FY) 2015, Congress has appropriated funds to ACL in support of APS through section 2042(a) and 2401(c) of the Elder Justice Act. This funding is used to collect data, disseminate best practices, and provide discretionary elder justice demonstration grants.[28] In FY 2021, Congress provided the first dedicated appropriation to implement the Elder Justice Act section 2042(b), 42 U.S.C. 1397m–1(b), formula grants to all States, the District of Columbia, and the Territories to enhance APS, totaling $188 million, and another $188 million in FY 2022.[29] The recent Consolidated Appropriations Act of 2023 included an annual appropriation of $15 million to ACL to continue providing formula

[25] For example, South Carolina had the highest SSBG expenditure for *Vulnerable and Elderly Adults* in FY 2020 at $14,311,707 representing 58 percent of their entire block grant. The Dep't. of Health and Hum. Servs., Social Services Block Grant: Fiscal Year 2020. Ann. Rep. (2020). *https://www.acf.hhs.gov/sites/default/files/documents/ocs/RPT_SSBG_Annual%20Report_FY2020.pdf* (last visited May 11, 2023).

[26] 42 U.S.C. 1397k.

[27] The Admin. for Cmty. Living, *Federal Elder Justice Coordinating Council, https://ejcc.acl.gov/* (last visited Apr. 18, 2023).

[28] 42 U.S.C. 1397m–1.

[29] Coronavirus Response and Relief Supplemental Appropriations Act of 2021, Public Law 116–260, 134 Stat. 1182; American Rescue Plan Act of 2021, Public Law 117–2, 135 Stat. 4.

grants to APS programs under the Elder Justice Act section 2042(b), 42 U.S.C. 1397m–1(b).[30]

On numerous occasions, the APS community has stressed the need for more Federal guidance, leadership, stewardship, resources, and support for State and local APS programs and for victims of adult maltreatment. Advocates have requested greater funding and Federal regulatory guidance for APS systems in their testimony before Congress,[31] in their statements to the EJCC,[32] and in peer-reviewed journals.[33]

The GAO conducted three studies on the topic of abuse, neglect, and exploitation between 2010 and 2013 to shed light on the need for Federal leadership. The studies' findings repeatedly recommend a coordinated, Federal response to address the gaps in public awareness, prevention, intervention, coordination, and research of elder maltreatment, as well as a Federal ''home'' for APS.[34]

This proposed rule represents the first exercise of ACL's regulatory authority over APS under the OAA and the EJA. While we have issued sub-regulatory guidance, including comprehensive Consensus Guidelines in 2016 and 2020 that include APS evidence-informed practices, we believe it is necessary to codify and clarify a set of mandatory minimum national standards to ensure uniformity across APS programs and to promote high quality service delivery that thus far has not been achieved under the current Consensus Guidelines.

In determining the scope of the APS regulations, we considered modeling our regulations after the child protective services (CPS) regulations administered by the Department's Administration for Children and Families.[35] We ultimately rejected this approach. The Child Abuse Prevention and Treatment Act of 1974 (Pub. L. 93–247), 42 U.S.C 5116, provides Federal funding to States for prevention, assessment, investigation, prosecution, and treatment of child abuse and neglect, and awards grants for demonstration projects.[36] In FY 2023, approximately $12 billion was provided for child welfare programs, and of that $852 million was appropriated specifically for child protection.[37] In contrast, the appropriation for activities under section 2042(b) of the EJA was funded for the first time in FY 2021 with one-time funding at $188 million a year for FYs 2021 and 2022 for State program start-up costs and to address urgent needs related to COVID–19, and $15 million in ACL's FY 2023 annual appropriation for ongoing operations. Further, the EJA is much smaller in scope both in terms of requirements and discretionary activities. Given the differences in size and scope of Federally authorized and supported activities, ACL believes it would not be appropriate to model the proposed APS regulations after CPS regulations. Moreover, our approach takes into consideration the differences between minor children and adults legally, developmentally, and specifically with regards to rights to make decisions about their lives. ACL invites comment on both the scope and depth of topics proposed for regulatory action and the rationale presented.

Instead of providing detailed and broad requirements like those that apply to CPS, our proposals require the State entity to establish written policies and procedures in areas of significant APS practice. In the interests of transparency, we considered mandating that State entities disclose such policies and procedures (for example, through publication on a State website) except where such disclosure might adversely affect law enforcement efforts, but we ultimately decided to leave such disclosure to State discretion. We welcome comment on the costs and benefits of mandating such disclosure.

Our proposed standards are a minimum floor. States may impose additional requirements on their APS systems above and beyond these proposed minimum Federal standards. ACL invites comment on both the scope and depth of topics proposed for regulatory action and the rationale presented.

III. Adult Protective Services Programs

A. Section 1324.400 Eligibility for Funding

Proposed § 1324.400 clarifies that eligibility for funding is conditioned on compliance with all proposed regulatory provisions. Under the proposed rules, State entities eligible for annual funding from ACL through section 2042 of the EJA, 42 U.S.C. 1397m–1(b) are required to submit a State plan in accordance with § 1324.408 detailing their activities, which ACL proposes to review and approve as a means of verifying compliance with the proposed rule. A State that failed to submit an approvable State plan would no longer be eligible for funding under section 2042(b) of the EJA.

ACL will provide States support and technical assistance in developing an approvable State plan. All States are afforded an opportunity to appeal the Assistant Secretary's disapproval of a State plan submission under proposed § 1324.408(e). If a State declines or fails to qualify for section 2042(b) funding, ACL will redistribute the funds in accordance with the EJA section 2042 formula. Further information on State plan development will be provided in sub-regulatory guidance.

B. Section 1324.401 Definitions

We propose to define the following terms in § 1324.401 to provide clarity on the terms used and referenced in this proposed rule: ''Abuse,'' ''Adult,'' ''Adult maltreatment,'' ''Adult Protective Services (APS), '' ''Adult Protective Services (APS) program,'' ''Adult Protective Services (APS) system,'' ''Allegation,'' ''Assistant Secretary for Aging,'' ''At risk,'' ''Case,'' ''Client,'' ''Conflict of Interest,'' ''Dual Relationship,'' ''Emergency Protective Action,'' ''Exploitation,'' ''Inconclusive,'' ''Intake or pre-

[30] Consolidated Appropriations Act, 2023, Pub. L. 117–328. FY 21 and 22 funding was one-time funding to help with start-up costs and infrastructure and the surge of needs during the COVID–19 Public Health Emergency. FY 23 funding was the first ongoing formula grant funding to State grantees.

[31] *Public and Outside Witness, Hearing Before the Subcomm. on Lab., Health and Hum. Servs. Educ. & Related Agencies of the House Appropriations Comm.,* 113th Cong. (2014) (statement of Kathleen M. Quinn, Exec. Dir. of the Nat'l. Adult Protective Servs. Ass'n.) *https://www.napsa-now.org/wp-content/uploads/2014/03/Appropriations-Testimony-NAPSA.pdf.*

[32] *Enhancing Response to Elder Abuse, Neglect, and Exploitation: Elder Justice Coordinating Council, Testimony of William Benson* (Oct. 10, 2012), *http://www.aoa.acl.gov/AoA_Programs/Elder_Rights//Meetings/2012_10_11.aspx.*

[33] Kathleen Quinn & William Benson, *The States' Elder Abuse Victim Services: A System in Search of Support,* 36 GENERATIONS 66 (2012).

[34] U.S. Gen. Acct. Off., *GAO–11–208, Elder Justice: Stronger Federal Leadership Could Enhance National Response to Elder Abuse* (2011) *https://www.gao.gov/products/gao-11-208;* U.S. Gen. Acct. Off., *GAO–13–110, Elder Justice: National Strategy Needed to Effectively Combat Elder Financial Exploitation* (2012) *https://www.gao.gov/products/gao-13-110;* U.S. Gen. Acct. Off., *GAO–13–498, Elder Justice: More Federal Coordination and Public Awareness Needed* (2013) *https://www.gao.gov/products/gao-13-498.*

[35] Since 2011, ACL has received questions and comments from Congress, OMB, and others regarding comparisons between CPS and APS. For example, GAO made comparisons between APS and CPS in their 2011 report ''ELDER JUSTICE—Stronger Federal Leadership Could Help Improve Response to Elder Abuse,'' (*https://www.gao.gov/assets/gao-11-384t.pdf*) and the Congressional Research Service did a report on this subject as recently as 2020: (*https://crsreports.congress.gov/product/pdf/R/R43707*).

[36] Admin. for Child. and Fams., Dep't. of Health and Hum. Servs., *About CAPTA: A Legislative History* (2019) *https://www.childwelfare.gov/pubpdfs/about.pdf.*

[37] Emilie Stoltzfus, U.S. Cong. Rsch. Serv. *Child Welfare: Purposes, Federal Programs, and Funding* (2023) *https://crsreports.congress.gov/product/pdf/IF/IF10590.*

screening,'' ''Investigation,'' ''Mandated Reporter,'' ''Neglect,'' ''Perpetrator,'' ''Post-investigation services,'' ''Quality assurance,'' ''Screening,'' ''Self-neglect,'' ''Sexual abuse,'' ''State entity,'' ''Substantiated,'' ''Trust Relationship,'' ''Unsubstantiated,'' and ''Victim.''

Definitions of note are discussed below.

''*Abuse*'' Consistent with definitions in section 102(1) of the OAA, 42 U.S.C. 3002(1), and section 2011 of the EJA, 42 U.S.C. 1397j(1), we propose to define abuse as a component of *adult maltreatment* to encompass the knowing psychological, emotional, and/or physical harm or the knowing deprivation of goods or services necessary to meet essential needs or avoid such harm.

''*Adult*'' For purposes of this regulation, we propose to define adult to mean the eligible APS population in any given State. The term ''adult'' will be used in place of ''older adults and adults with disabilities who are eligible for adult protective services.'' We have chosen to defer to States' definitions of ''adult'' for the purposes of determining eligibility for APS services in recognition of the complex and intersecting nature of social services, public benefits, and behavioral health care services in States. In many States, eligibility for APS services is consistent with eligibility for social services, behavioral health, and other public benefits. A change to eligibility for APS in a State to conform with the proposed rule's definition of ''adult'' may potentially disrupt important relationships among programs and services outside APS. We request comments on this approach.

''*Adult maltreatment*'' We propose to define adult maltreatment to bring uniformity and specificity to a foundational term used throughout APS systems and this proposed regulation. Although there is increasing consensus on the core components of adult maltreatment, the field has not adopted a universally accepted definition. The definition of adult maltreatment and its component parts has a direct impact on the reports accepted for investigation, discussed in greater detail below at § 1324.402. Our proposed definition and the requirements set out in § 1324.402(a) that States investigate, at a minimum, the five elements of adult maltreatment will establish a comprehensive and uniform approach to investigations of adult maltreatment while still allowing for State flexibility and discretion. Our definition represents a consistent baseline upon which States may build. In developing our definition and the requirements contained in proposed § 1324.402(a), we adopted categories generally recognized by the field, used by the research community, and in common use by the vast majority of States.[38]

We propose that adult maltreatment encompass five categories further defined in this Section: abuse, neglect, exploitation, sexual abuse, and self-neglect. Adult maltreatment occurs when there is self-neglect or when a perpetrator commits abuse, neglect, exploitation, or sexual abuse of an adult. The adult must have a relationship of trust with the perpetrator of abuse, neglect, exploitation, or sexual abuse and be at risk of harm from the perpetrator.

This proposed rule, in alignment with most States' policies, limits the definition of abuse or maltreatment to relationships of trust where the alleged victim is at risk of harm from the perpetrator. A relationship of trust includes a caregiving relationship or other familial, social, or professional relationship where a person assumes responsibility for protecting the interests of the adult or where expectations of care or protection arise by law or social convention.[39] APS systems refer cases outside trust relationships to partner organizations and services, such as other social service programs or law enforcement. This distinction acknowledges the elevated harm engendered when injury occurs within the context of a relationship of trust and an adult is vulnerable to harm generally and in relation to the perpetrator. It prioritizes finite APS resources to focus on this heightened injury. We further define ''trust relationship'' and ''at risk'' later in this proposed rule. We recognize that our current proposal narrows the universe of required APS investigations under proposed § 1324.402(a) and in developing our proposal, we considered a more expansive definition of adult maltreatment. We invite comment on our definition and whether it reflects current practice in APS programs and whether it will resolve confusion. We describe some of this confusion throughout this discussion.

''*At risk*'' We propose to define ''at risk'' in accordance with Centers for Disease Control and Prevention (CDC) Elder Abuse Surveillance: Uniform Definitions and Recommended Core Data Elements (CDC Uniform Definitions) as ''the possibility that an individual will experience an event, illness, condition, disease, disorder, injury or other outcome that is adverse or detrimental and undesirable.'' We recognize the considerable variation among States in determining whether maltreatment must include ''vulnerability'' or other qualifier, and we seek comment on this definition. The CDC definition on which ours is based was developed through a collaborative process among a panel of scientists and practitioners representing multiple disciplines (*e.g.,* medicine, psychology, epidemiology, sociology, gerontology), as well as Federal staff.

''*Conflict of Interest*'' means a situation that interferes with a program or program employee or representative's ability to provide objective information or act in the best interests of the adult. Such a conflict of interest would arise, for example, when an employee, officer, or agent, any member of their immediate family, their partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from their affiliation with an APS system.[40]

''*Dual Relationship*'' means relationships in which an APS worker assumes one or more professional, personal, or volunteer roles in addition to their role as an APS worker at the same time, or sequentially, with a client.

''*Exploitation*'' Consistent with definitions in section 102 of the OAA, 42 U.S.C. 3002(18)(A), and section 2011 of the EJA, 42 U.S.C. 1397j(8), we propose to define exploitation as a type of *adult maltreatment.* Financial exploitation and exploitation are used interchangeably in the OAA, and exploitation for the purposes of adult maltreatment in this proposed rule is likewise confined to illegal, unauthorized, or improper acts related to the personal finances of an adult (as defined above) (for example, exploitation does not encompass labor rights violations).

''*Neglect*'' Consistent with the definitions in section 102 of the OAA, 42 U.S.C. 3002(38) and section 2011 of the EJA, 42 U.S.C. 1397j(16), we propose to define neglect as the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an adult (as defined above).

''*Self-neglect*'' Consistent with the definitions in section 102(48) of the OAA, 42 U.SC. 3002(48), and section 2011 of the EJA 42 U.S.C. 1397j(18) we propose to define self-neglect as an adult's (as defined above) inability to

[38] *See supra* note 4.

[39] The Cntrs. for Disease Control and Prevention, *Elder Abuse Surveillance: Uniform Definitions and Recommended Core Data Elements* (2016) *https://www.cdc.gov/violenceprevention/pdf/EA_Book_Revised_2016.pdf.*

[40] *See* 45 CFR 75.321(c)(1).

perform essential self-care tasks due to physical or mental impairment or diminished capacity.

''*Sexual abuse*'' The OAA defines ''sexual assault'' at section 102(50), 42 U.S.C. 3002(50), to have the meaning given in section 2003 of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3796gg–2. Our proposed definition encompasses, but is broader than, sexual assault as defined in the OAA. Consistent with the definition outlined in the CDC Uniform Definitions, we propose to define sexual abuse as the forced and/or unwanted sexual interaction (touching and non-touching acts) of any kind with an adult (as defined above).

''*Trust relationship*'' Consistent with the CDC Uniform Definitions, ACL proposes to define ''trust relationship'' as ''the rational expectation or belief that a relative, friend, caregiver, or other person with whom a [. . .] relationship exists can or should be relied upon to protect the interests of an adult (as defined above) and/or provide for an adult's care. This expectation is based on either the willful assumption of responsibility or expectations of care or protection arising from legal or social conventions.'' Including the requirement of a trust relationship for purposes of determining when APS becomes involved furthers consistency of APS interventions in adult maltreatment. Furthermore, most APS systems apply a standard of ''trust relationship'' in their definition of maltreatment. We seek comments on this approach.

C. Section 1324.402 Program Administration

Proposed § 1324.402(a) requires APS systems to respond to reports of adult maltreatment, which include allegations of abuse, neglect, exploitation, sexual abuse, and self-neglect. Currently, all APS systems are required by State statute to investigate allegations of neglect and physical abuse, and nearly all states investigate allegations of self-neglect, sexual abuse, financial exploitation, and emotional or psychological abuse.[41] Forty-two States investigate six or more types of maltreatment.[42]

TABLE C.1—TYPES OF MALTREATMENT INVESTIGATED BY STATES[43]

Maltreatment type	Physical abuse	Neglect	Exploitation	Sexual abuse	Self-neglect	Emotional abuse
No. of States	54	54	46	52	51	45

However, definitions of these terms vary across States. In certain States, APS programs are not required to respond to certain forms of adult maltreatment. This means that adults are not adequately protected by APS throughout the United States.

In addition to our request for comment on the definition of adult maltreatment, we seek comment as to whether a mandatory requirement for investigation based on the definitions of abuse, neglect, exploitation, sexual abuse, and self-neglect is appropriate, adequately reflects the needs and experiences of APS systems, as well as any potential State and local burden associated with such a requirement.

Proposed § 1324.402(a) also requires the State entity to adopt certain policies and procedures for receiving and responding to reports of adult maltreatment. These policies and procedures must be person-directed and rely on concepts of least restrictive alternatives. Principles of person-directedness respect the integrity and authority of adults to make their own life choices. They promote APS clients' concepts of what safety and quality of life mean, and success and positive outcomes are defined by the client, not the APS worker. This provision sets minimum requirements for States as they establish or revise policies and procedures while still leaving flexibility to best meet their unique needs.

The State entity must create precise, standardized criteria for determining or assessing eligibility for APS services. States must also create clear and specific parameters of the settings, locations, and types of alleged perpetrators for which allegations of maltreatment will be investigated by their APS system. For example, States vary on whether they conduct investigations in congregate residential settings. In addition, States must establish processes to ensure the parameters are implemented consistently across APS programs in their State.

We propose that States define processes for receiving, screening, prioritizing, and referring cases based on risk and the nature of the adult maltreatment in a uniform and consistent manner across their State. Under this proposal, the State entity would be required to establish policies and procedures to manage a tiered risk-based assessment system, differentiating response requirements for cases that represent immediate and non-immediate risks. As proposed, immediate risk would be assessed via the likelihood of death, irreparable harm, or significant loss of income, assets, or resources. Responses should occur no later than 24 calendar hours (one calendar day) after receiving the report for cases representing an immediate risk, and no later than seven calendar days for cases of non-immediate risk.

Currently, there is data on all but one APS systems' tiered report response procedures. Two State APS systems have no priority levels, and one has two priority levels. The rest have three or more. States vary widely in their response time and not all States address high priority cases within 24 hours, although most do.[44] We seek to bring all States into alignment with the Consensus Guideline in this area of practice; timely response to immediate need cases is essential to the health and safety of potential maltreatment victims.

For allegations of adult maltreatment outside APS jurisdiction, we propose the State entity establish appropriate referral mechanisms and information and data sharing agreements with the state and/or local entity with jurisdiction to investigate.

In proposed § 1324.402(b), we require State entities to establish policies and procedures to inform potential APS clients of their rights at first contact with client. With this provision, we seek to address concerns that APS programs do not regularly inform potential clients of their rights under existing State laws,

[41] *See supra* note 4, at 17. Other maltreatment type categories exist in State statutes, including non-specific exploitation, abandonment, abduction, isolation, other maltreatment, and suspicious death.

[42] *Id.*

[43] The total potential universe for any analysis is 56, however American Samoa and the Commonwealth of the Northern Mariana Islands do not currently have staffed programs. The unit of analysis for this data is 54. This includes APS programs in all States and the District of Columbia. In three States—Louisiana, Massachusetts, and Pennsylvania—APS is provided in two different programs for older adults and younger adults.

[44] *See supra* note 4.

including confidentiality and privacy requirements, the right to refuse services, and the right to refrain from speaking with APS. This is directly responsive to problems that have been reported by the APS and disability and aging community advocates to ACL in listening sessions and other community engagement activities. Failure to inform potential clients of their rights undermines trust between individuals and APS and may alienate communities. Under this proposal, APS programs must inform potential APS clients of their rights in the format and language preferred by the individual, including those with limited English proficiency and individuals with disabilities. APS programs should take appropriate steps to ensure communication with individuals with disabilities are as effective as communications with others More generally, standard plain language practice is to write informational materials at or near a fourth grade reading level and not to exceed an eighth grade reading level. We expect State entities to meet these standards in complying with language proposed at § 1324.402(b).

Proposed § 1324.402(d) requires the State entity to establish policies and procedures for the staffing of APS systems. We propose to require States to establish a minimum staff to client ratio appropriate to the circumstances in the State. We believe, consistent with the literature, that fixed staff to client ratios in APS systems will improve health and safety outcomes for adult victims of maltreatment.[45] We also believe that establishing fixed staff to client ratios will improve the long-term continuity of APS programs. We request comment on whether staff to client ratios are feasible for APS programs and whether required workload studies would assist in development of appropriate ratios.

We also propose to require mandatory APS training as a part of implementing the proposed policies and procedures. Findings from a 2015–2018 survey completed by 49 APS offices found that half of programs were not training on core competencies while two had no training whatsoever.[46] Training and ongoing education increases staff knowledge, leading to increased rates of investigation and substantiation.[47] Supervisors provide both clinical and administrative oversight, approve key casework decisions, and guide the caseworkers in overall case management. Sufficient training is critical to ensuring they can perform these functions.

D. Section 1324.403 Investigation and Post-Investigation Services

Proposed § 1324.403 requires the State entity to develop and implement a standardized set of policies and procedures for essential APS functions throughout the lifecycle of a case. The purpose of an APS investigation is to collect information about the allegations of maltreatment, determine if the alleged victim is eligible for APS services, assess the immediate risk of the situation, conduct an investigation, and ultimately make a finding as to the presence or absence of adult maltreatment. If adult maltreatment is present, APS then identifies the service needs of the client and develops a plan, including recommendations or referrals to other entities, such as social services. Many, but not all, APS systems also follow cases post-investigation. If it is found the individual seeking APS services is ineligible, the APS program may develop referrals to appropriate services.

Proposed § 1324.403 sets forth requirements for the development of standardized, specific policies and procedures governing an APS investigation from initiation to post-investigation services. Initiation of the investigation encompasses screening and triaging reports as well as decision-making processes for determining immediate safety and risk factors affecting the adult. The investigation itself includes the collection of relevant information and evidence. Policies and procedures must also detail methods to make determinations on allegations and record case findings, including consultation with outside experts when appropriate. Professional fields for such experts include: medicine, social work, behavioral health, finance/accounting, and long-term care. We likewise propose the APS worker provide referrals to other agencies and programs, as appropriate under State law, such as referrals to Area Agencies on Aging (AAAs), State Medicaid programs, or Centers for Independent Living for services. For example, the APS program may make a referral to the State Medicaid agency for home and community-based services to mitigate harm and assist the victim in recovery from the abuse. During the course of an investigation, APS may in limited circumstances take emergency protective action, which we propose to define in § 1324.401. Such action should be person-directed and taken as a last resort after exploring all other viable options, prioritizing community integration, autonomy, and individual choice. This proposed section also requires the APS investigator or supervisor to communicate results of the investigation to the client.

Post-investigation services are provided through a variety of mechanisms and funding sources. APS staff may provide services directly (*e.g.,* assistance with housing relocation), purchase them (*e.g.,* pay for medications or utility bills), or make referrals to community-based services (*e.g.,* home-delivered meals). Our proposals provide a framework for the provision of post-investigation services that promote the dignity and autonomy of the client, leverage community resources, and aim to prevent future adult maltreatment.

Proposed § 1324.403 draws heavily from the Consensus Guidelines.[48] We seek comment on whether this approach includes all necessary activities for investigation and post-investigation services as well as examples of investigation and post-investigation services we have not proposed for inclusion.

E. Section 1324.404 Conflict of Interest

Proposed § 1324.404 requires the State entity to establish policies and procedures to prevent, recognize, and promptly addresses both real and perceived conflicts of interest at the organizational and individual level. Trust in APS by individuals receiving services and the broader community is essential to the ability of APS programs to effectively perform their functions. APS programs form partnerships and referral relationships with allied organizations and professionals to provide necessary services and supports to victims of adult maltreatment before, during, and after intake and investigation. Conflicts of interest may arise when a State employee, APS worker, or APS system's financial or personal interests influence, or are at odds with, the interests of a client or cohort of clients.

Many APS programs that provide services for victims of adult

[45] Jane E. Ball et. al., *Post-operative Mortality, Missed Care and Nurse Staffing in Nine Countries: A Cross-Sectional Study,*78, Int. J. Nursing Studies, 10 (Feb. 2018) *https://pubmed.ncbi.nlm.nih.gov/28844649/;* Charlene Harrington et. al. *Appropriate Nurse Staffing Levels for U.S. Nursing Homes,* 13 Health Serv. Insights (2020) *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7328494/.*

[46] Pi-Ju Liua & Leslie Ross, *Adult Protective Services Training: A Brief Report on the State of the Nation,* 33 J. of Elder Abuse and Neglect, 82 (2021). *https://www.tandfonline.com/doi/epdf/10.1080/08946566.2020.1845271?needAccess=true&role=button.*

[47] Kelli Connell-Carrick & Maria Scannapieco, Adult Protective Services: State of the Workforce and Worker Development, 29(2) Gerontology & Geriatrics Education, 189–206 (2008) *https://pubmed.ncbi.nlm.nih.gov/19042235/.*

[48] *See supra* note 22.

maltreatment have close relationships and shared locations and data systems with AAAs, State Units on Aging (SUAs), and other health and human services agencies.[49] Without appropriate conflict of interest safeguards, familiarity and ease of referral arising from proximity and shared data systems may create incentives for APS to refer clients to the AAA or SUA over another more appropriate service provider.

Individual APS workers may face conflicts of interest if they are in a ''dual relationship'' serving multiple roles for a single client. For example, an individual who serves as both an APS worker and a long-term services and supports options counselor for the same client may be unable to make objective findings of adult maltreatment in a case where a caregiver is an alleged perpetrator of adult maltreatment against the client. The individual serving as APS worker and options counselor may, in their role as APS worker, choose not to substantiate findings of adult maltreatment against the caregiver because, as an options counselor, they know the client chooses the alleged perpetrator as their caregiver. We propose these dual relationships be permitted only when unavoidable and that conflicts of interest be appropriately mitigated.

We further propose that APS programs have policies and procedures that ensure conflicts of interests are avoided and, if found, remedied. These procedures could include firewalls and disclosure requirements. We seek comment on whether our proposal reflects the universe of actual and potential conflicts of interest, those who may be a party to a conflict, and ways in which we may strengthen these requirements while not placing undue programmatic or administrative burden on APS systems.

F. Section 1324.405 Accepting Reports

Proposed § 1324.405 requires the State entity to have policies and procedures for accepting reports of adult maltreatment. We propose such policies and procedures require prompt receipt of reports of alleged maltreatment, including multiple methods for receiving reports 24 hours a day, 7 calendar days a week in manners that are fully accessible (*e.g.,* using augmentative communication devices or translation services). Currently 29 programs meet the Consensus Guidelines recommendation to be available 24/7 for intake of new reports.[50] Receiving reports 24 hours a day 7 calendar days a week is paramount to the safety of victims and potential maltreatment victims. For this reason, we propose a specific timeframe for receiving reports consistent with our recommendations in the Consensus Guidelines. In the interests of accessibility, we considered mandating that APS systems establish an online reporting mechanism (for example, accepting reports of adult maltreatment through a website), but we ultimately decided to leave such operational details to State discretion. We welcome comment on the costs and benefits of mandating such an online reporting mechanism.

APS receives reports from both the general public and individuals mandated by the State to report suspected adult maltreatment. Mandatory reporting is an essential tool in combating adult maltreatment; 49 States currently have mandatory reporting statues.[51] In one study, researchers found that reports made by mandatory reporters to APS were more likely to be substantiated and less likely to result in service refusal than reports made by non-mandated reporters.[52] However, most APS programs are not required to contact mandatory reporters with information about the case after a report is made. Mandatory reporters have stated that the absence of a reporting feedback loop creates a disincentive for reporting.[53] The most common complaint ACL receives from community providers that work with APS is that while they may be required under State law to report, they do not receive information back on the status of their report. We propose mandatory reporters be provided information on the status of a report consistent with State confidentiality laws. In the interests of accountability, we considered mandating that States provide such status information to such mandatory reporters within a certain timeframe (for example, within 30 calendar days of the report), but we ultimately decided to leave such operational details to State discretion. We welcome comment on the costs and benefits of mandating such a mandatory response timeframe. Additionally, we invite comment on the type of information that might be returned to mandatory reporters after a report of maltreatment is submitted to an APS program, including potential administrative burdens to APS programs and client confidentiality and privacy conflicts that may arise from such requirements.

G. Section 1324.406 Coordination With Other Entities

Proposed § 1324.406(a) requires the State APS system to coordinate with other State and local governmental agencies, community-based organizations, and other entities engaged in activities to promote the health and wellbeing of older people and adults with disabilities for the purposes of addressing the needs of the adult experiencing the maltreatment. These entities include, but are not limited to, the Long-Term Care Ombudsman, State offices that handle scams and frauds, State and local law enforcement, State Medicaid agencies and other State agencies responsible for home and community-based services (HCBS) programs, and financial services providers. Such coordination maximizes the resources of APS systems, improves investigation capacity, and ensures post-investigation services are effective. We have chosen to require States coordinate with these specific entities to ensure coordination with critical partners in the investigation of abuse, neglect, and exploitation. Various non-APS entities have authority to investigate maltreatment based on who the victim and perpetrator of the maltreatment are, and where the maltreatment took place. An effective, holistic response to adult maltreatment must include all enumerated entities working in coordination with APS. Currently, the research suggests this is not taking place.[54] We seek comment as to whether we have accurately captured the scope of appropriate entities with which APS should collaborate, and whether our proposal would create unintended

[49] *See supra* note 4, at 4. State Units on Aging house APS in 20 States. Other State health and human services agencies (not SUAs or Child Welfare) house APS in 20 States.

[50] *See supra* note 4, at 30.

[51] *See supra* note 4.

[52] Kristin Elizabeth Lees, (2018) Elder Mistreatment: An examination of formal and informal responses to a growing public health concern (Mar. 23, 2018) (Ph.D. dissertation, Northeastern University) *https://repository.library.northeastern.edu/files/neu:cj82r9210/fulltext.pdf.*

[53] Olanike Ojelabi et al., *Closing the Loop: An Environmental Scan of APS-Reporter Feedback Policies and Practices,* 5(1) Innovation in Aging 931 (2021) *https://doi.org/10.1093/geroni/igab046.3370;* S. Jackson, *Adult Protective services and victim services: A review of the literature to increase understanding between these two fields,* 34 Aggression & Violent Behavior 214 (2017) *https://www.semanticscholar.org/paper/Adult-protective-services-and-victim-services%3A-A-of-Jackson/15e2bbf7e180170443f67e90ae1acfc50ffbdb8a;* Marguerite DeLiema et al., *Voices from the Frontlines: Examining Elder Abuse from Multiple Professional Perspectives,* 40 Health & Social Work e15 (2015) *https://doi.org/10.1093/hsw/hlv012.*

[54] Health and Human Serv. Off. of the Insp. Gen. *Incidents of Potential Abuse and Neglect at Skilled Nursing Facilities Were Not Always Reported and Investigated* (2008) *https://oig.hhs.gov/oas/reports/region1/11600509.pdf.*

consequences for APS programs. We also seek examples of where coordination is working and where barriers to coordination exist.

Proposed § 1324.406(b) requires the State APS system to develop policies and procedures to address coordination and information sharing with several governmental and private entities both within a State and across State lines for the purpose of carrying out investigations. Coordination could include development of memoranda of understanding (*e.g.,* for referrals and information sharing), establishment of multi-disciplinary teams across and among governmental and non-governmental entities (with appropriate safeguards for confidentiality to protect client privacy and the integrity of APS investigations), and collaboration regarding training and best practices. We recognize that State laws may preclude sharing of certain information related to individual investigations, but we believe that all APS systems at a minimum can work with other entities around prevention and best practices to address adult maltreatment.

State authority to investigate alleged maltreatment of adults resides in different entities. Therefore, it is imperative to have a clear understanding of which entities are responsible for which types of investigations. Which entity is responsible for an investigation will depend upon various factors including: the location or setting of the maltreatment; the category of adult maltreatment; the relationship between an alleged perpetrator and an alleged victim; and the characteristics of the alleged victim. To help resolve confusion within States, we propose in § 1324.406(b) that the APS programs develop and implement information and data sharing agreements to ensure coordination of investigations and that appropriate referrals are made when APS receives a report that is outside their jurisdiction to investigate, including with law enforcement, the State Medicaid office, and State licensing and certification agencies. Coordination between entities reduces the imposition of multiple investigations on adults who have been harmed and helps prevent future maltreatment. Such agreements will allow one program to share with the other information about alleged maltreatment by someone who works with, or who has a relationship of trust with, individuals being served by both organizations. Additionally, such agreements will allow the sharing of information between these entities on the outcome of individual investigations, as permissible under State law. For example, this could include communication of the results to State Medicaid agencies in instances in which a Medicaid provider or direct care worker is determined by APS to be a perpetrator of the maltreatment. We seek comment on our proposals.

We also believe it is critical to address coordination across States given that perpetrators may move a victim to another jurisdiction or may move to another jurisdiction themselves where they engage in the same practices investigated in the first State. We request comments and examples of best practices on how coordination and collaboration with other States and local jurisdictions may be effectively achieved, minimizing administrative burden.

H. Section 1324.407 APS Program Performance

Proposed § 1324.407 requires the APS State entity to collect and report aggregated data annually to ACL.[55] We anticipate data elements to be similar to those already reported voluntarily by most States through the NAMRS system. However, because NAMRS data submission is voluntary, the completeness of the data varies widely and therefore limits our ability to understand incidence of adult maltreatment within and across States. We will provide future guidance on data elements to be collected and seek comment on what these data elements should be.

We also propose that the State entity develop policies and procedures regarding the maintenance of individual APS case data. We propose that APS systems keep the individual data set for at least five years. We believe five years is an appropriate timeframe to allow APS programs to assess clients across time to determine whether repeated abuse or recidivism is occurring, providing APS knowledge critical to prevent future instances of maltreatment. In developing our proposal, we considered a requirement of ten years; while a longer timeframe would improve data accuracy, it would increase burden for States. We seek comment on whether five years is an appropriate timeframe or whether a greater or lesser duration is optimal.

I. Section 1324.408 State Plans

Proposed § 1324.407 requires each APS State entity to develop a State plan consistent with 45 CFR 75.206(d) and requirements set forth in the EJA and by the Assistant Secretary for Aging.[56] State plans will allow States to document the tangible outcomes planned and achieved as a result of the funding they receive from ACL. Funding provided to State APS entities through the Elder Justice Act is contingent on compliance with our proposed regulations. The State plan is the mechanism through which States demonstrate, and ACL evaluates, this compliance.

State plans also can be used to translate activities, data, and outcomes into proven best practices, which can be used to leverage additional resources. State plans promote coordination and collaboration to better serve the people of a State by providing a blueprint that describes what the State will undertake to meet the needs of the population it serves. The State plan should be developed in conjunction with the APS programs and with input from interested parties and updated at least every five years or as frequently as every three years at State option..

ACL has administrative oversight responsibility with respect to the expenditures of Federal funds pursuant to the EJA. As a condition of approval and receipt of Federal funding, APS systems must include assurances in their State plans that they will develop and adhere to policies and procedures as defined by these regulations. ACL will provide technical assistance to States regarding the preparation of State plans and are responsible for reviewing those that are submitted for compliance. Annual State program performance data collected and submitted to ACL pursuant to § 1324.407 will be used to measure performance and assess the extent to which State systems are meeting State plan objectives.

State plans will be reviewed and approved by the Director of the Office for Elder Justice and Adult Protective Services (OEJAPS), the position designated by Sec. 201(e)(1) of the OAA, 42 U.S.C. 3011(e)(1). A State entity dissatisfied with the Director of OEJAPS' final determination may appeal to the Deputy Assistant Secretary for review not later than 30 calendar days after the date of the determination. The State entity will then be afforded an opportunity for a hearing before the

[55] Elder Justice Act sections 2042, 2042(b)(4), 42 U.S.C. 1397m–1(a)(1)(B), 1397m–1(b)(4); Older Americans Act of 1965 section 201(e)(2)(A)(ii)(I), 42 U.S.C. 3011.

[56] 45 CFR 75.206(d) allows for State plans vs. applications for funding, thereby reducing burden. The Older Americans Act of 1965 section 201(1)(e)(A)(ii), 201(1)(e)(A)(iv)–(B), 42 U.S.C. 3011(e)(1)(A)(ii), 3011(e)(1)(A)(iv) and 42 U.S.C. 3011(e)(1)(B) directs the Assistant Secretary for Aging to collect data and information, and strategic plans from States. The Elder Justice Act section 2042(b)(4), 42 U.S.C. 1397m–1(b)(4) authorizes State reports from each entity receiving funding.

Deputy Assistant Secretary. If State disagrees with the determination of the Deputy Assistant Secretary, it may appeal to the Assistant Secretary not later than 30 calendar days after the date of the Deputy Assistant Secretary's decision.

We seek comment on our proposals for the development of State plans as well as ACL oversight and monitoring of State plan objectives.

J. Regulatory Approach

The proposed regulations seek to bring States into alignment with evidence-informed practices while recognizing that States should have the flexibility and discretion to tailor policies and procedures to their circumstances. In general, we have provided broad guidelines for the required policies and procedures but leave States to fill in the details and set their own standards as they develop new, or amend current, policies and procedures. In several areas, we have taken a more proscriptive approach to establish a uniform national baseline. Where we have been more directive, we have done so because we believe it is critical to the safety of maltreatment victims or potential victims, is foundational to the functioning of an APS system, or because the APS community has requested granular policy direction. These proscriptive requirements have been drawn from the evidence-informed Consensus Guidelines and represent promising practices for APS service delivery. We invite comment as to whether we have struck the appropriate balance between setting a proscriptive minimum floor for essential policies and procedures and leaving general implementation of the policies and procedures to State discretion.

K. Effective Date

We propose an effective date for these provisions of three years from date of issuance of the final rule.

L. Request for Comment

ACL seeks comment on all issues raised by this proposed regulation as detailed above.

IV. Required Regulatory Analyses

A. Preliminary Regulatory Impact Analysis (Executive Orders 12866 and 13563)

1. Introduction

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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 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 this proposed rule is significant. Therefore, OMB has reviewed this proposed rule.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $177 million, using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in impacts that exceed this threshold.

Summary of Costs and Benefits

Compared to the baseline scenario wherein APS systems continue to operate under State law with no Federal regulation, we identify several impacts of this proposed rule. We anticipate that the proposed rule will: require the revision of State policies and procedures, require training on new rules for APS staff, require the submission of new State plans, require data sharing agreements between APS systems and other State entities, require APS systems create a feedback loop to provide information to mandatory reporters, require data reporting to ACL, inform potential APS clients of their rights under State law, and require new or updated record retention systems for certain States. We anticipate that the final rule will result in improved consistency in implementation of APS systems within and across States, clarity of obligations associated with Federal funding for administrators of APS systems, and will result in better and more effective service delivery within and across States with better quality investigations in turn leading to more person-directed outcomes.

This analysis describes costs associated with issuing APS regulations and quantifies several categories of costs to grantees (State entities) and sub-grantees (APS programs), collectively referred to as APS systems, and to ACL under the proposed rule. Specifically, we quantify costs associated with APS systems (1) revising policies and procedures, (2) conducting trainings, (3) implementing policies and procedures (3) reporting data to ACL (4) maintaining records retention system (5) developing State plans. The proposed effective date of this rulemaking is three years from the date of final publication. This is to allow for variation in the timing of State legislative sessions. We anticipate that all States will have fully implemented the rule by its effective date and impacts will be measurable by that time. We conclude the proposed rule would result in a cost of $3,532,916.99 to fully implement. This cost will be offset by improved investigations and better outcomes for the victims of adult maltreatment. This represents significant value, particularly given the widespread and egregious nature of adult maltreatment in the United States.

The analysis also includes a discussion of the potential benefits under the rule that we do not quantify. We request comments on our estimates

of the cost and benefits of this proposed rule, including the impacts that are may not be quantified in this analysis.

A detailed discussion of costs and benefits associated with the rulemaking follows.

a. Costs of the Proposed Rule

1. Revising Policies and Procedures

This analysis anticipates that the proposed rule would result in one-time costs to State entities and APS programs to revise policies and procedures. The majority of APS systems currently maintain policies and procedures, often based on State statute. Data from our National Process Evaluation Report of Adult Protective Services (OMB Control Number 0985–0054) and State experiences incorporating concepts from the Consensus Guidelines suggest our proposed rules will establish a minimum standard that may reflect current practice in many States. For example, while all States currently require a screening process for intake, there is no uniformity or standardization in this process across or within States and detail contained in policies and procedures (if present) varies. Therefore, in requiring standard policies and procedures for APS systems, ACL anticipates that all APS programs may create new or revise their current policies and procedures under the proposed rule; however, the level of revision will vary by State. There is currently no data on the total number of APS programs. Our estimates reflect our understanding of the structure of State APS systems and the assumption that there is one program per county in local-level systems, totaling 928 APS programs nationwide.[57]

We estimate that roughly half of these entities will require more extensive revisions, with the rest requiring limited revisions to their current policies and procedures. We estimate that programs with more extensive revisions will spend twenty (20) total hours on revisions per entity. Of these, fifteen (15) would be spent by a mid-level manager equivalent to a first-line supervisor (Occupation code 43–1011), at a cost of $30.47 unadjusted hourly wage, $60.94 per hour adjusted for non-wage benefits and indirect costs (15 × $60.94), while an average of five (5) hours would be spent by executive staff equivalent to a general and operations manager (Occupation code 11–1021), at a cost of $55.41 per hour unadjusted hourly wage, $110.82 per hour adjusted for non-wage benefits and indirect costs (5 × $110.82).[58] For programs with less extensive revisions, we assume fifteen (15) total hours spent on revisions per entity. Of these, ten (10) hours would be spent by a mid-level manager equivalent to a first-line supervisor (Occupation code 43–1011), at a cost of $30.47 per hour unadjusted hourly wage, $60.94 per hour adjusted for non-wage benefits and indirect costs (10 × $60.94), while an average of five (5) hours would be spent by executive staff equivalent to a general and operations manager (Occupation code 11–1021), at a cost of $55.41 unadjusted hourly wage, $110.82 adjusted for non-wage benefits and indirect costs (5 × $110.82).

We monetize the time that would be spent by APS programs on revising policies and procedures by estimating a total cost per entity of $1,468.02 or $1,163.50, depending on the extent of the revisions. For the approximately 464 programs with less extensive revisions, we estimate a cost of approximately $539,864. For the 464 programs with more extensive revisions, we estimate a cost of approximately $681,244.80.28. We estimate the total cost associated with revisions with respect to the proposed rule for APS systems of $1,221,108.80.

The above estimates of time and number of State entities or APS programs that would revise their policies under the regulation are approximate estimates based on ACL's extensive experience working with APS systems, including providing technical assistance, and feedback and inquiries that we have received from State entities and APS programs. Due to variation in the types and sizes of State entities and incomplete data on local programs, the above estimates of time and number of entities that would revise their policies under the regulation is difficult to calculate precisely.

2. Trainings on New Requirements

Cost to conduct trainings (ACL staff and contractors): ACL estimates that the Federal Government will incur a one-time expense with respect to training or re-training State entities under the proposed rule.

Senior ACL staff will train State entities by the ten (10) HHS regions assisted by its technical assistance provider the APS Technical Assistance Resource Center (TARC). We assume for each of the ten (10) regions that trainings will take three (3) hours of staff time for one Federal GS–14 equivalent[59] at a cost of $63.64 unadjusted hourly wage, $127.28 adjusted for non-wage benefits and indirect costs (3 × $127.28), three (3) hours of staff time for one GS–13 equivalent at a cost of $53.85 per unadjusted hourly wage, $107.70 per hour adjusted for non-wage benefits and indirect costs (3 × $107.70), and (3) and three hours of staff time for five (5) contractors equivalent to training and development managers (U.S. Department of Labor (DOL) Bureau of Labor Statistics (BLS) Occupation code 11–3131) at a cost of $61.92 per hour unadjusted for non-wage benefits, $123.84 per hour adjusted for non-wage benefits and indirect costs (3 × 5 × $123.84). This is inclusive of time to prepare and conduct the trainings.

We monetize the time spent by Federal employees and contractors to prepare and conduct trainings for State entities by estimating a total cost per regional training of $2,562.54. For ten trainings a total of $25,625.40.

Cost to conduct training (State entity to local APS program): We further anticipate in each of the 15 local-level systems the State entity would incur a one-time expense to conduct a training on the new policies and procedures for the State's local APS programs. For each State entity to prepare and conduct a training (15 trainings total) we anticipate two (2) employees per State entity each equivalent to a first-line supervisor (BLS Occupation code 43–1011), would spend two (2) total hours (one (1) hour per employee) at a cost of $30.47 per hour unadjusted hourly wage, $60.94 per hour adjusting for non-wage benefits and indirect costs (2 × $60.94).

We monetize the time spent by State entities to prepare and conduct trainings for local APS programs at $121.88 per training. For 15 State entities we anticipate a total of $1,828.20.

Cost to conduct training (APS programs to APS workers): We anticipate each of the 928 local APS programs will incur a one-time expense to conduct a training for APS workers on new policies and procedures. For each program to prepare and conduct a training we anticipate three (3) hours to prepare and conduct a training of one mid-level manager equivalent to a first-

[57] The structure and administration of APS in the United States is variable and we lack data on the number of local APS programs. Some States have a single entity that controls and administers the program, others have a State entity and local programs. There is a staffed APS office in every State government, the District of Columbia and three Territories which receives ACL grant funding. Fifteen States have local level APS programs, the others are State-administered and have a single APS entity for the entire State. We have used counties as a proxy for the 15 with local programs.

[58] Wages are multiplied by a factor of 2 for non-wage benefits and indirect costs.

[59] Represents adjusted Federal salary in DC–VA–MD area, *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/DCB.pdf.*

line supervisor (BLS Occupation code 43–1011), at a cost of $30.47 per hour unadjusted hourly wage, $60.94 after adjusting for non-wage benefits and indirect costs (3 × $60.94). We monetize the time spent by APS programs to prepare and conduct trainings at $182.82 (928 × $182.82). We monetize the time spent by APS programs to train their workers at $169,656.96.

Cost to receive training: There is no data on individual local APS program staffing. However, NAMRS does track an aggregate number of APS staff at the State and local level, from State supervisors to local APS workers: 8,287. We assume 5 percent of these workers are executive staff equivalent to a general and operations manager (BLS Occupation code 11–1021), at a cost of $55.41 unadjusted hourly wage, $110.82 per hour adjusted for non-wage benefits and indirect costs (414 × $110.82), 15 precent are first-line supervisor (Occupation code 43–1011), at a cost of $60.94 per hour adjusting for non-wage benefits and indirect costs (1,243 × $60.94) and 80 percent are Social and Human Service Assistants (Occupation code 21–1093) at a cost of $19.45 per hour unadjusted hourly wage, and $38.90 adjusted for non-wage benefits and indirect costs. (6,629 × $38.90).

We monetize the time spent by APS staff to receive a one-hour training at $379,496.

We monetize the total amount of time spent to give and receive trainings at $576,606.56. Of this, $550,981.16 is State expense and $25,625.40 is Federal expense.

3. Implementing New Policies and Procedures

The proposed rule requires several changes in APS practice which may represent a cost to States.

Cost to implement a two-tiered, immediate vs. non immediate risk, response system: Forty-nine States currently have a two-tiered (or higher) system. Forty-nine States currently respond to immediate need intakes within 24 hours. After consulting former APS administrators, we have determined that we cannot fully quantify how much it would cost a State to develop and implement a new two-tiered system. However, given that most States currently already maintain such a system, we anticipate it would be a very minor on-going cost in total.

Cost to implement mandatory staff to client ratios: The provision requiring States to establish a minimum staffing ratio is intended to better enable States to ensure long-term continuity of programs. We anticipate that this will be an on-going, cost neutral provision; States have the discretion to set minimum staffing ratios consistent with current practice, and therefore currently available resources. We do not anticipate that States would commit to increasing staffing ratios without a commensurate increase in Federal or other funding. Consequently, we anticipate that this provision will not result in increased cost to APS programs. We invite comment as to whether our analysis of the potential financial burden of this proposal is accurate.

Cost to implement a mandatory reporter feedback loop: According to 2021 ACL Evaluation survey and NAMRS data, of all reports nationally which resulted in an investigation, 255,395 (59 percent) were made by professionals. However, not all professionals are mandated reporters and who is a mandated reporter varies by State. For example, a home and community-based service provider or other social service provider would be considered a professional but may not be a mandated reporter. For this reason, we assume 75 percent of reports resulting in an investigation made by professionals were made by mandated reporters (191,546). One such response an APS program could make to a mandated reporter is to send an email. If for each report leading to an investigation received by a mandatory reporter, an APS program sends an email in response, we anticipate a Social and Human Service Assistants (Occupation code 21–1093) at a cost of $19.45 per hour unadjusted hourly wage, and $38.90 adjusted for non-wage benefits and indirect costs would spend ten (10) minutes sending the email. We monetize the on-going cost for all 56 systems to send an email for each report of maltreatment from a mandatory reporter to be $1,241,856.57 annually.

81 percent APS programs do not currently require a feedback loop for mandatory reporters.[60] To bring all States into compliance (.81 × $1,241,856.57) with the proposed rules would amount to $1,005,903.82 annually.

Cost to implement data sharing agreements: Anecdotally we know very few States currently have data sharing agreements with other maltreatment investigatory entities in place. We have estimated 50 APS systems currently have no data use agreements in place while six may have one or more. For illustrative purposes we assume each State without a data sharing agreement will establish three (3) MOUs (with, for example, the Medicaid agency, the Long-term care ombudsman, and the Protection and Advocacy System). Each MOU will take one mid-level manager equivalent to a first-line supervisor (Occupation code 43–1011), at a cost of $30.47 per hour unadjusted hourly wage, $60.94 after adjusting for non-wage benefits and indirect costs three (3) hours to draft (3 × $60.94). It will take a privacy officer equivalent to a lawyer (Occupation code 23–1011) at a cost of $78.74 unadjusted hourly wage, $156.80 per hour adjusted for non-wage benefits and indirect costs one (1) hour to review and approve (1 × $156.80). It will take an executive staff equivalent to a general and operations manager (Occupation code 11–1021), at a cost of $55.41 unadjusted hourly wage, $110.82 per hour adjusted for non-wage benefits and indirect costs two (2) hours (2 × $110.82) to review and approve. We monetize the cost for one (1) State APS system to develop one (1) MOU to be $561.26. For a State APS system to establish three (3) MOUs, we monetize the cost to be $1,683.78. For fifty (50) State APS systems to develop one MOUs we monetize the cost to be $84,189. We likewise assume that each of the three (3) entities the APS entity is entering into an MOU with will incur substantially similar costs. We monetize the expense of three (3) entities in fifty (50) states to enter into MOUs with the APS system in their State at $84,189. We monetize the one-time total cost of establishing data sharing agreements to be $168,378.

Cost to inform individuals of their rights under State law: We do not currently have data on the number of States informing individuals of their rights under State law. We know anecdotally some States offer potential clients a paper brochure informing them of their rights. We anticipate costs of producing and distributing such brochures to be one new pamphlet per State system or 56 pamphlets total. It will require three (3) hours of staff time by a Social and Human Service Assistants (Occupation code 21–1093) at a cost of $19.45 per hour unadjusted hourly wage, and $38.90 adjusted for non-wage benefits and indirect costs (3 × $38.90) and one (1) hour for a first-line supervisor (Occupation code 43–1011), at a cost of $30.47 per hour unadjusted hourly wage, $60.94 to review and approve (1 × $60.94) for a total of $177.64 per State in staff time to develop each pamphlet. We monetize the one-time staff cost for 56 State systems to develop a pamphlet (56 × $177.64) at $9,947.84. According to our NAMRS data, 806,219 client investigations were performed in FFY

[60] *See supra* note 53.

2022. Each pamphlet will cost 23 cents to print and produce. Assuming a pamphlet is provided for every new client at the initiation of an investigation (806,219 × .23) it would cost $185,430.37 annually to produce and distribute pamphlets nationwide. In total, to develop a new pamphlet in all 56 States and distribute them at the beginning of all investigations would cost $195,378.21 in staff time and materials the first year the policy is in place. Subsequently, States would incur $185, 430.37 annually to implement this provision.

3. Data Reporting to ACL

In our proposed regulations, we require States to collect and report specific data to ACL. As in our NAMRS data collection system, this data collection uses existing State administrative information systems. Therefore, States will not incur new data collection costs as the result of this rulemaking. Most of the data collected are standard data used by the agency. Operating costs of the information systems are part of State agency operations and would not maintained solely for the purpose of submitting data in compliance with the proposed rules.

For data reporting from the State to ACL under the proposed regulations, we anticipate a similar system as NAMRS case component data currently reported voluntarily by States. We performed a burden estimate prior to launching this reporting system. We estimated for 35 States staff cost would be a total annual burden of 675 hours at $46.00 per hour (675 × $46.00) for a total of $31,050. IT staff total annual burden was estimated at 3,075 hours at $69.00 (3,075 × $69.00) per hour for a total of $212,175. Using this measure as a proxy, we estimate the proposed rule's data reporting requirements will cost a total of $339,480 annually for all 56 State entities.

4. Record Retention

The proposed rule imposes a new requirement that APS programs retain case data for five years. Many, but not all, programs currently retain case data for a number of years, but comprehensive information does not exist on State retention policies. We can extrapolate from data reporting in the NAMRS that most States retain case data for an average of two years.[61] NAMRS is a comprehensive, voluntary, national reporting system for APS programs. It collects quantitative and qualitative data on APS practices and policies, and the outcomes of investigations into the maltreatment of older adults and adults with disabilities from every State and Territory. All but one State currently maintains an IT infrastructure that supports the retention of electronic APS data and maintains it for one year. For this reason, the cost to further store it for five years will create a de minimis cost for APS.

5. State plans and NAMRS

This will be the first times State entities are required to develop and submit State plans under section 2042 of the Elder Justice Act, 42 U.S.C. 1397m–1(b). However, States develop spending plans under 45 CFR 75.206(d) every three to five years and, based on our extensive experience working with APS systems and OAA grantees on their State plans, we do not anticipate a significantly greater level of detail for the development of State plans. We anticipate for each State the equivalent of two (2) hour of executive staff equivalent to a general and operations manager (Occupation code 11–1021), at a cost of $55.41 per hour unadjusted adjusted hourly wage, $110.82 adjusted for non-wage benefits and indirect costs (2 × $110.82), and four (4) hours of a first-line supervisor (Occupation code 43–1011), at a cost of $30.47 per hour unadjusted hourly wage, $60.94 adjusting for non-wage benefits and indirect costs (4 × $60.94). State plans will be updated every three to five years. We monetize the cost of drafting one State plan at $465.40. We monetize 56 State plans at $26,062.40.

1. Total Quantified Costs

a. One-Time Costs

Item of cost:		
Policies and Procedures Update	$1,221,108.80	
Policies and Procedures Implementation	State	Federal
Training	$550,981.16	$25,625.40
Policies and Procedures Implementation: Data Sharing Agreements	$168,378.00	
Policies and Procedures: Informing Individuals of Their Rights Under State Law	$9,947.84	
Total	$1,976,041.20	

b. Ongoing Costs (Annual)

Item of Cost:	
Policies and Procedures Implementation: Two-Tiered Response System	$0
Policies and Procedures Implementation: Staff to Client Ratios	0
Policies and Procedures Implementation: Mandatory Reporter Feedback Loop	1,005,903.82
Policies and Procedures Implementation: Informing Individuals of Their Rights Under State Law	185,430.37
Data reporting to ACL	339,480.00
Record Retention	0

[61] The Admin. for Cmty. Living, *Adult Maltreatment Report 2020* (2021) *https://acl.gov/sites/default/files/programs/2021-10/2020_NAMRS_Report_ADA-Final_Update2.pdf.*

State plan	26,062.40 (renewed every three to five years)
Total	1,556,876.59

d. Discussion of Benefits

Older adults who experience maltreatment are three times more likely to experience adverse consequences to health, living arrangements, or financial arrangements than their counterparts who do not experience maltreatment.[62] According to 2022 NAMRS data, four percent or approximately 36,000 APS clients died during the course of an APS investigation. According to the Consumer Financial Protection Bureau, financial institutions reported $1.7 billion in elder financial abuse in 2017.[63] However, in 2016 three States projected the cost could be over $1 billion in their State alone.[64]

While this proposed rule does not directly affect the underlying causes of maltreatment, which are complex and multifactorial, it does establish a national baseline of quality in APS practice to intervene in maltreatment and mitigate harm as it is occurring. We anticipate this could reduce the number of deaths that may occur during the course of an APS investigation.

Generally speaking, the benefits of the rule are difficult to quantify. The minimum standards proposed by the NPRM are in direct response to requests from APS systems for more guidance and uniformity in policy within and among States. We anticipate that if implemented, the rule would elevate evidence-informed practices, bring clarity and consistency to programs, and improve the quality of service delivery for adult maltreatment victims and potential victims. For example, if all States implemented 24 hour per day, 7 days per week reporting acceptance protocols, an individual experiencing maltreatment may be identified earlier, and an investigation could commence and intervene sooner. Staffing ratios can promote adequate staffing, allowing a worker to devote more time to a case. Training requirements allow caseworkers to better handle and resolve cases. It may also decrease repeat abuse through post-investigation services.

Similarly, proposals on APS coordination with other entities maximize the resources of APS systems, improve investigation capacity, ensure post-investigation services are effective, reduce the imposition of multiple investigations on adults who have been harmed, and help prevent future maltreatment.

Another example of a difficult to quantify benefit is a standardized timeframe for case record retention. There are currently no minimum requirements for States to retain their records. The proposed rule's five-year minimum retention period facilitates States' ability to track victims and perpetrators across time to deter abuse and identify recidivism while minimizing administrative burden.

The proposed rules were informed by expert-developed evidence-informed practices as articulated in our Consensus Guidelines. These evidence-informed practices, when implemented, will result in higher quality investigations allowing APS to apprehend perpetrators of adult maltreatment with greater frequency and accuracy, in turn protecting the health and wellbeing of older adults and adults with disabilities.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. 601 *et seq.*), agencies must consider the impact of regulations on small entities and analyze regulatory options that would minimize a rule's impacts on these entities. Alternatively, the agency head may certify that the rule will not have a significant economic impact on a substantial number of small entities. ACL does not anticipate that this rulemaking will have a significant economic impact on a substantial number of small businesses.

APS is a State-based social services program controlled centrally by a State office. Thirty-nine APS systems are State-administered, meaning State staff operate programs out of locally placed State offices.[65] Fifteen States are county-administered and controlled or a hybrid of State and county-administered and controlled. In county-administered systems, the State entity grants funding to local entities, including counties and non-profits, but does not perform investigatory functions. In hybrid systems, the State maintains a more active oversight and investigatory role, but delegates to local entities. Nationally, State employees perform 70 percent of APS investigations. County and non-profit employees perform the remainder.[66]

In State-administered systems, no small entities are implicated. State Government employees and offices are not small entities as defined by 5 U.S.C. 601. In the 15 county and hybrid administered systems, there are 459 counties of less than 50,000 people.[67] The administrative structure of APS is complex and data is incomplete. However, for illustrative purposes we assume that in these 459 counties there is one APS program that is a small entity under 5 U.S.C. 601, either a small government jurisdiction or non-profit.

Much of the cost of implementation will be borne by State entities in both State-administered and county and hybrid-administered States. In both such systems, the State entity exercises significant control; the State entity receives and distributes Federal funding and is responsible for revising policies and procedures, training local entities, and reporting data to ACL. We monetize the average cost per State APS system to be $63,087.80. As an example, Colorado has an estimated 48 counties under 50,000 people. Assuming the State entity absorbs the 25 percent of the cost of implementation, each entity would incur $985.75 in implementation expenses per year. Much of this would be a one-time expense. North Carolina has ten counties under 50,000 people. On average, assuming the State entity absorbs 25 percent of the cost burden of the rule, each small entity would incur $4,731.58 in expense per year, much of this representing a one-time expense.

[62] M.S. Lachs et al. *The Mortality of Elder Mistreatment,* 280(5) JAMA 428–432 (Aug. 1998) *https://pubmed.ncbi.nlm.nih.gov/9701077/.*

[63] U.S. Consumer. Fin. Protection. Bur., *Suspicious Activity Reports on Elder Financial Exploitation: Issues and Trends* (2019); *https://www.gao.gov/assets/gao-21-90.pdf.*

[64] U.S. Gen. Acct. Off., *GAO–21–90, HHS Could Do More to Encourage State Reporting on the Costs of Financial Exploitation* (2020) *https://www.gao.gov/assets/gao-21-90.pdf.*

[65] The Northern Mariana Islands and American Samoa currently have no staffed program; they are in the process of developing one.

[66] *See supra* note 4, at 20.

[67] We have made our calculations based on 2022 Census Bureau Data.

Furthermore, many small entities may already be in compliance with significant portions of these proposed regulations whether as written in policies and procedures or as informal practice.

Consequently, we have examined the economic implications of the proposed rule and find that if finalized, it will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement describing the agency's considerations. Policies that have federalism implications include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The proposed rule requires State APS systems to implement policies and procedures reflecting evidence-based practices. Receipt of Federal funding for APS systems under the EJA Sec. 2042, 42 U.S.C. 1397m–1(b) is contingent upon compliance with these proposed rules. Many States are already in substantial compliance with this proposal, however, some may need to revise or update their current APS policies, develop new policies or, in some cases, pass new laws or amend existing State statutes.

Consultations With State and Local Officials

Executive Order 13132 requires meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. As detailed in the preamble, the proposed regulations closely mirror the *2020 Voluntary Consensus Guidelines for State Adult Protective Services Systems* (Consensus Guidelines). All specific mandates (for example, day and time requirements for case response) contained in the proposed regulation reflect the Consensus Guidelines.

The Consensus Guidelines were developed with extensive input from the APS community, including State and local officials. Interested parties were invited to provide feedback for the proposed updates to the Consensus Guidelines through a public comment period and five webinars. A Request for Information was posted on ACL's website and the comment period ran from March until May 2019. Five webinars were held during April and May 2019 hosting approximately 190 participants, representing 39 states and the District of Columbia. Participants represented ten fields, with most participants representing the APS network (66 percent). The vast majority of these APS programs are administered and staffed by State and local government entities.

The goals of the outreach and engagement process were to hear from all interested entities, including State and local officials, the public, and professional fields about their experiences with APS. The engagement process ensured affected parties understood why and how ACL was leading the development of the Consensus Guidelines and provided an opportunity to give input into the process and content of the Consensus Guidelines. ACL will also review comments on the proposed rule from State and local officials and consider any additional concerns in developing a final rule.

Nature of Concerns and the Need To Issue This Proposed Rule

Community members welcomed the Consensus Guidelines and were generally in support of the process by which they were created and updated as well as the substantive content, noting that they ''help set the standard and support future planning and State legislative advocacy.'' [68]

We received comments that the Consensus Guidelines were ''aspirational'' and would be challenging to implement absent additional funding. We seriously considered these views in developing this proposed rule. We also completed a regulatory impact analysis to fully assess costs and benefits of the new requirements. We recognize that some of the new proposed regulatory provisions will create administrative and monetary burden in updating policies and procedures as well as potential changes to State law. However, much of this burden will be a one-time expense and States will have significant discretion to implement the proposed provisions in the manner best suited to State needs.

Extent To Which We Meet Those Concerns

In FY 2021, Congress provided the first dedicated appropriation to implement the Elder Justice Act section 2042(b), 42 U.S.C. 1397m–1(b), formula grants to all States, the District of Columbia, and the Territories to enhance APS, totaling $188 million, and another $188 million in FY 2022. The recent Consolidated Appropriations Act of 2023 included an annual appropriation of $15 million to ACL to continue providing formula grants to APS programs under EJA section 2042(b), 42 U.S.C. 1397m–1(b). This funding is available to States for the implementation of the proposed regulation and meet the concerns commenters raised in 2019 around dedicated funding for APS systems. Additionally, the regulatory changes we propose have already been implemented by many States, and we believe the benefit of the proposed requirements will be significant.

D. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

ACL will fulfill its responsibilities under Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to establish procedures for meaningful consultation and coordination with tribal officials in the development of Federal policies that have Tribal implications. ACL will solicit input from affected Federally recognized Tribes as we develop these updated regulations and will conduct a Tribal consultation meeting [exact date to be specified in NPRM when NPRM publication date is known].

E. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact Statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a covered agency must prepare a budgetary impact Statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. We have determined that this rulemaking would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

[68] *Report on the Updates to the Voluntary Consensus Guidelines for APS Systems,* Appendix 3: 19, *https://acl.gov/sites/default/files/programs/2020-05/ACL-Appendix_3.fin_508.pdf.*

Accordingly, we have not prepared a budgetary impact Statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small governments.

F. Plain Language in Government Writing

Pursuant to Executive Order 13563 of January 18, 2011, and Executive Order 12866 of September 30, 1993, Executive Departments and Agencies are directed to use plain language in all proposed and final rules. ACL believes it has used plain language in drafting the proposed rule and would welcome any comment from the public about how to make this rulemaking easier to read and understand.

G. Paperwork Reduction Act (PRA)

The proposed rule contains new information collection requirements under 5 CFR part 1320. These new burdens include: new State plans, new program performance data collection and reporting, a requirement that States generate, maintain, and retain written policies and procedures, a requirement that State APS systems disclose information to clients regarding their rights under State law, and a requirement that States generate, maintain, and retain information and data sharing agreements (while also disclosing data through such agreements).

As detailed in the regulatory impact analysis, we estimate the following total burden across all States and Territories for such requirements:

(1) State plans: $26,062.40 (renewed every three to five years);

(2) Program performance data collection: $339,480.00 (annually);

(3) Creation of written policies and procedures: $1,221,108.00 (one-time expense);

(4) Disclosure to potential clients their rights under State law: $195,378.21 ($9,947.84 in one-time expense and $185,430.37 annually);

(5) Creation and maintenance of data sharing agreements: $168,378.00 (one-time expense).

ACL will submit information to the OMB for review, as appropriate. The State plans, program performance data, written policies and procedures, disclosure to potential clients of their rights under State law, and the creation and maintenance of data sharing agreements will be submitted for approval as part of a generic clearance package for information collections related to ACL Administration on Aging programs. ACL intends to update applicable guidance as needed.

List of Subjects in 45 CFR Part 1324

Adult Protective Services, Elder Rights, Grant programs to States, Older Adults.

For the reasons discussed in the preamble, ACL proposes to amend 45 CFR part 1324 as follows:

■ 1. Add subpart D to read as follows:

PART 1324—ALLOTMENTS FOR VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES

Subpart D—Adult Protective Services Programs

Sec.

Authority: 42 U.S.C. 3011(e)(3); 42 U.S.C. 1397m–1.

§ 1324.400 Eligibility for funding.

To be eligible for funding under 42 U.S.C. 1397m–1(b) State entities are required to adhere to all provisions contained herein.

§ 1324.401 Definitions.

As used in this part, the term—

Abuse means the knowing infliction of physical or psychological harm or the knowing deprivation of goods or services that are necessary to meet essential needs or to avoid physical or psychological harm.

Adult means older adults and adults with disabilities as defined by State APS laws.

Adult maltreatment means self-neglect or abuse, neglect, exploitation, or sexual abuse of an adult at-risk of harm from a perpetrator with whom they have a trust relationship.

Adult Protective Services (APS) means such services provided to adults as the Assistant Secretary for Aging may specify in guidance and includes such services as:

(1) Receiving reports of adult abuse, neglect, exploitation, sexual abuse, and self-neglect;

(2) Investigating the reports described in paragraph (1) of this definition;

(3) Case planning, monitoring, evaluation, and other case work and services, and;

(4) Providing, arranging for, or facilitating the provision of medical, social services, economic, legal, housing, law enforcement, or other protective, emergency, or supportive services.

Adult Protective Services Program means local Adult Protective Services providers within an Adult Protective Services system.

Adult Protective Services (APS) System means the totality of both the State entity and the local APS programs.

Allegation means an accusation of adult maltreatment associated with each adult in a report made to APS. There may be multiple allegations in an investigation.

At risk of harm means the possibility that an individual will experience an event, illness, condition, disease, disorder, injury, or other outcome that is adverse or detrimental and undesirable.

Assistant Secretary for Aging means the position identified in section 201(a) of the Older Americans Act (OAA), 42 U.S.C. 3002(7).

Case means all activities related to an APS investigation of, and response to, an allegation of adult maltreatment.

Client means an adult who is the subject of an investigation by APS regarding a report of alleged adult maltreatment.

Conflict of Interest means a situation that interferes with a program or program representative's ability to provide objective information or act in the best interests of the adult. A conflict of interest would arise when an employee, officer, or agent of APS, any member of their immediate family, their partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from their affiliation with APS systems.

Dual relationship means relationships in which an APS worker assumes one or more professional, personal, or volunteer roles in addition to their role as an APS worker at the same time, or sequentially, with a client.

Emergency Protective Action means emergency use of APS funds to purchase goods or services, immediate access to petitioning the court for temporary or emergency orders, and emergency out-of-home placement.

Exploitation means the fraudulent or otherwise illegal, unauthorized, or improper act or process of a person, including a caregiver or fiduciary, that uses the resources of an adult for monetary or personal benefit, profit, or gain, or that results in depriving an adult of rightful access to, or use of, their benefits, resources, belongings, or assets.

Inconclusive means a determination that there was not sufficient evidence obtained during an APS investigation for APS to conclude whether adult maltreatment occurred.

Intake or pre-screening means the APS process of receiving allegations of adult maltreatment and gathering information on the reports, the alleged victim, and the alleged perpetrator.

Investigation means the process by which APS examines and gathers information about an allegation of adult maltreatment to determine if the circumstances of the allegation meet the States 's standards of evidence for a finding of a substantiated, unsubstantiated, or inconclusive allegation.

Mandated Reporter means someone who is required by State law to report suspected adult maltreatment to APS.

Neglect means the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an adult.

Perpetrator means the person determined by APS to be responsible for one or more instances of adult maltreatment for one or more victims.

Post-investigation Services means the activities undertaken by APS in support of a client after a finding on an allegation of adult maltreatment has been made.

Quality assurance means the process by which APS programs ensure investigations meet or exceed established standards, and includes:

(1) Thorough documentation of all investigation and case management activities;

(2) Review and approval of case closure; and

(3) Conducting a case review process.

Screening means a process whereby APS carefully reviews the intake information to determine if the report of adult maltreatment meets the minimum requirements to be opened for investigation by APS, or if the report should be referred to a service or program other than APS.

Self-neglect means an adult's inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks including:

(1) Obtaining essential food, clothing, shelter, and medical care;

(2) Obtaining goods and services necessary to maintain physical health, mental health, or general safety, or;

(3) Managing one's own financial affairs.

Sexual abuse means the forced and/or unwanted sexual interaction (touching and non-touching acts) of any kind with an adult.

State entity means the unit of State, District of Columbia, or U.S. Territorial Government designated as responsible for APS programs, including through the establishment and enforcement of policies and procedures, and that receives Federal grant funding from ACL under section 2042(b) of the EJA, 42 U.S.C. 1397m–1(b).

Substantiated means APS has made an investigation disposition that the allegation of maltreatment meets state law or agency policy for concluding that the adult was maltreated.

Trust relationship means the rational expectation or belief that a relative, friend, caregiver, or other person with whom a relationship exists can or should be relied upon to protect the interests of an adult (as defined above) and/or provide for an adult's care. This expectation is based on either the willful assumption of responsibility or expectations of care or protection arising from legal or social conventions.

Unsubstantiated means that APS has made an investigation disposition that the allegation of maltreatment does not meet State law or agency policy for concluding that the adult was maltreated.

Victim means an adult who has experienced adult maltreatment.

§ 1324.402 Program administration.

(a) The State entity shall create and implement policies and procedures for APS systems to receive and respond to reports of adult maltreatment in a standardized fashion. Such policies and procedures, at a minimum, shall:

(1) Incorporate principles of person-directed services and planning and reliance on least restrictive alternatives, as well as other policies identified by the Assistant Secretary for Aging;

(2) Define the populations eligible for APS services;

(3) Define the settings, locations, and types of alleged perpetrator for each adult maltreatment type that are subject to APS investigations in the State;

(4) Define processes for receiving, screening, prioritizing, and referring cases based on risk and type of adult maltreatment consistent with § 1324.403, including:

(i) Creation of at least a two-tiered response system for initial contact with the alleged victim based on risk of death, irreparable harm, or significant loss of income, assets, or resources.

(A) For immediate risk, response should occur in person no later than twenty-four hours after receiving a report of adult maltreatment.

(B) For non-immediate risk, response should occur no more than seven calendar days after report of adult maltreatment is received.

(5) Define investigation and post-investigation procedures, as identified in § 1324.403.

(b) At first contact APS systems shall provide to potential APS clients an explanation of their rights, including:

(1) The right under State law to confidentiality of personal information;

(2) The right under State law to refuse to speak to APS;

(3) The right under State law to refuse APS services, and;

(4) Such other explanations of rights as determined by the Assistant Secretary for Aging.

(c) Information shall be provided in a format and language understandable by the individual, and in alternative formats as needed.

(d) The State entity shall establish policies and procedures for the staffing of APS systems that include:

(1) Staff training and on-going education, including training on conflicts of interest;

(2) Staff supervision, and;

(3) Staff to client ratios.

(e) The State entity shall establish such other program administration policies and procedures and provide other information to APS clients as established by the Assistant Secretary for Aging.

§ 1324.403 Investigation and post-investigation services.

The State entity shall adopt standardized and systematic policies and procedures for APS investigation and post-investigation activities across and within the State including, at a minimum:

(a) Screening, triaging, and decision-making criteria or protocols to review and assign adult maltreatment reports for APS investigation, and to report to other authorities;

(b) Tools and/or decision-making processes for APS to review reports of adult maltreatment for any emergency needs of the adult and for immediate safety and risk factors affecting the adult or APS worker when responding to the report and;

(c) Practices during investigations to collect information and evidence to inform allegation disposition and service planning that will:

(1) Recognize acceptance of APS services is voluntary, except where limited by State law;

(2) Ensure safety of APS client and worker;

(3) Ensure the preservation of an adult's rights;

(4) Integrate principles of person-directedness and trauma-informed approaches;

(5) Maximize engagement with the APS client, and;

(6) Permit APS to seek emergency protective action only as appropriate and necessary as a measure of last resort to protect the life and wellbeing of the client from self-harm or harm from others.

(d) Methods to make determinations on allegations and record case findings, including:

(1) Ability for APS programs to consult with appropriate experts, other team members, and supervisors;

(2) Protocols for the standards of evidence APS should apply when making a determination on allegations.

(e) Provision of APS post-investigation services, as appropriate, that:

(1) Respect the autonomy and authority of clients to make their own life choices;

(2) Respect the client's views about safety, quality of life, and success;

(3) Hold perpetrators accountable for the adult maltreatment and for stopping the abusive behavior;

(4) Develop any service plan or referrals in consultation and agreement with the client;

(5) Engage community partners through referrals for services or purchase of services where services are not directly provided by APS, and;

(6) Monitor the status of client and services, and the impact of services.

(f) Case handling criteria that:

(1) Establish timeframes for on-going review of open cases;

(2) Establish length of time by which investigations should be completed, and determinations be made; and

(3) Documents, at a minimum:

(i) The APS interventions and services delivered;

(ii) Significant changes in client status;

(iii) Assessment of the outcome and efficacy of intervention and services;

(iv) Assessment of safety and risk at case closure; and

(v) The reason or decision to close the case.

§ 1324.404 Conflict of interest.

The State entity shall establish standardized policies and procedures to avoid both actual and perceived conflicts of interest for APS. Such policies and procedures must include mechanisms to identify, remove, and remedy any existing conflicts of interest at organizational and individual levels, including to:

(a) Ensure that employees and agents engaged in any part of an APS investigation do not also provide direct services to, or oversee the direct provision of services, to the client;

(b) Ensure that employees and agents administering APS programs do not have a personal financial interest in an entity to which an APS program they refer clients to services recommended by the APS program;

(c) Ensure that no APS employee or agent, or member of an employee or agent's immediate family, is subject to conflict of interest;

(d) Prohibit dual relationships unless unavoidable and ensure appropriate safeguards are established should such relationships occur;

(e) Establish robust monitoring and oversight, to identify conflict of interest, and;

(f) Remove and remedy actual, perceived, or potential conflicts that arise.

§ 1324.405 Accepting reports.

(a) The State entity shall establish standardized policies and procedures for receiving reports of adult maltreatment 24 hours per day, 7 calendar days per week, using multiple methods of reporting to ensure accessibility.

(b) The State entity shall establish standardized policies and procedures for APS to accept reports of alleged adult maltreatment by mandatory reporters that:

(1) Shares information regarding a report to APS with the mandated reporter which shall include, at a minimum:

(i) Whether a case has been opened as a result of the report, and;

(ii) The disposition or finding of the allegation in the report.

(c) The State entity shall establish and adhere to standardized policies and procedures to maintain the confidentiality of reporters and information provided in a report.

§ 1324.406 Coordination with other entities.

(a) State entities shall establish policies and procedures, consistent with State law, to ensure coordination and to detect, prevent, address, and remedy adult maltreatment with other appropriate entities, including but not limited to:

(1) Other APS programs in the state, when authority over APS is divided between different jurisdictions or agencies;

(2) Other governmental agencies that investigate allegations of adult maltreatment, including, but not limited to, the State Medicaid agency, State nursing home licensing and certification, State department of health and licensing and certification, and tribal governments;

(3) Law enforcement agencies with jurisdiction to investigate suspected crimes related to adult maltreatment; State or local police agencies, tribal law enforcement, State Medicaid Fraud Control Units, and Federal law enforcement agencies;

(4) Organizations with authority to advocate on behalf of individuals who experienced the alleged adult maltreatment, such as the State Long-Term Care Ombudsman Program and/or investigate allegations of adult maltreatment such as the Protection and Advocacy Systems;

(5) Emergency management systems, and;

(6) Banking and financial institutions.

(b) Policies and procedures must, at a minimum:

(1) Address coordination and collaboration to detect, prevent, address, and remedy adult maltreatment during all stages of an adult maltreatment investigation conducted by APS or by other agencies and organizations with authority and jurisdiction to investigate reports of adult maltreatment;

(2) Address information sharing on the status and resolution of investigations between the APS system and other entities responsible in the state or other jurisdiction for investigation, to the extent permissible under applicable State law, and;

(3) Allow for the establishment of memoranda of understanding, where appropriate, to facilitate information exchanges, quality assurance activities, cross-training, development of formal multidisciplinary and cross agency adult maltreatment teams, co-location of staff within appropriate agencies, and other activities as determined by the State entity.

§ 1324.407 APS program performance.

The State entity shall develop policies and procedures for APS for the collection and maintenance of data on investigations conducted by APS systems. They shall:

(a) Collect and report annually to ACL such APS system-wide data as required by the Assistant Secretary for Aging.

(b) Develop policies and procedures to ensure that the APS system retains individual case data obtained from APS investigations for a minimum of 5 years.

§ 1324.408 State plans.

(a) State entities must develop and submit to the Director of the Office of Elder Justice and Adult Protective Services, the position designated by 42 U.S.C. 3011(e)(1), a State APS plan that meets the requirements set forth by the Deputy Assistant Secretary for Aging.

(b) The State plan shall be developed by the State entity in collaboration with APS programs.

(c) The State plan shall be updated at least every five years but as frequently as every three years.

(d) The State plan shall contain an assurance that all policies and procedures described herein will be developed and adhered to by the State APS system;

(e) State plans will be reviewed and approved by the Director of the Office of Elder Justice and Adult Protective Services. Any State dissatisfied with the final decision of the Director of the Office of Elder Justice and Adult Protective Services may appeal to the Deputy Assistant Secretary for Aging within 30 calendar days of the date of the Director of the Office of Elder Justice and Adult Protective Services' final decision and will be afforded the opportunity for a hearing. If the State is dissatisfied with the final decision of the Deputy Assistant Secretary for Aging, it may appeal to the Assistant Secretary for Aging within 30 calendar days of the date of the Deputy Assistant Secretary for Aging's decision.

Dated: September 6, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–19516 Filed 9–11–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 224 and 226

[Docket No. 230906–0211]

RIN 0648–BL86

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Rice's Whale, Public Hearing and Extension of Public Comment Period

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

ACTION: Notice of public hearing, extension of comment period.

SUMMARY: We, NMFS, have rescheduled a public hearing related to the proposed rule to designate critical habitat for the Rice's whale under the Endangered Species Act (ESA). We are also extending the public comment period for this proposed rule to October 6, 2023.

DATES: A virtual public hearing on the proposed rule will be held online on September 28, 2023, from 3 p.m. to 5 p.m. (Eastern Daylight Time).

The proposed rule to designate critical habitat for the Rice's whale under the ESA was published on July 24, 2023 (88 FR 47453), and provided for a public comment period to September 22, 2023. The comment period is now extended to October 6, 2023. Comments must be received by October 6, 2023. Comments received after this date may not be accepted.

ADDRESSES: The public hearing will be conducted as a virtual meeting, and any member of the public can join by internet or phone regardless of location. You may join the virtual meeting using a web browser, a mobile app on a phone (app installation required), or—to listen only—using just a phone call, as specified at this link: *https://www.fisheries.noaa.gov/species/riceswhale#conservationmanagement.*

You may submit comments verbally at the public hearing. You may also submit comments in writing by any of the following methods:

- *Electronic Submissions:* Submit all electronic comments via the Federal eRulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0028. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Assistant Regional Administrator, Protected Resources Division, NMFS, Southeast Regional Office, 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 might not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe portable document format (PDF) formats only.

Details on the virtual public hearing will be made available on our website at: *https://www.fisheries.noaa.gov/species/riceswhale#conservation management.* The Endangered Species Act Critical Habitat Report, geographic information system (GIS) data, and maps that were prepared to support the development of this proposed rule are available on our website at: *https://www.fisheries.noaa.gov/species/riceswhale#conservationmanagement.* Previous rulemaking documents related to the listing of the species can also be obtained electronically on our website at: *https://www.fisheries.noaa.gov/species/rices-whale#conservation management.*

FOR FURTHER INFORMATION CONTACT: Grant Baysinger, NMFS Southeast Region, (727) 551–5790; or Lisa Manning, NMFS Office of Protected Resources, (301) 427–8466.

SUPPLEMENTARY INFORMATION: On July 24, 2023, NMFS published a proposed rule to designate critical habitat for the endangered Rice's whale (*Balaenoptera ricei*) under the ESA (88 FR 47453). In that notice, we also announced a 60-day public comment period, two virtual public hearings to be held on August 24, 2023 and August 30, 2023, and an option to request an additional public hearing made in writing by September 7, 2023. On August 24, 2023, we held a virtual public hearing. On August 28, 2023, we canceled the public hearing scheduled for August 30, 2023, ahead of Hurricane Idalia's expected landfall. We have now rescheduled that public hearing to September 28, 2023, from 3 p.m. to 5 p.m. (Eastern Daylight Time), as described in this notice. To accommodate this second public hearing and provide additional time needed to submit public comments following the disruptions stemming from Hurricane Idalia, we are also extending the public comment period to October 6, 2023.

Public Hearing

The public hearing on September 28, 2023, will be conducted online as a virtual meeting, as specified in **ADDRESSES** above. More detailed instructions for joining the virtual meeting are provided on our web page (see *https://www.fisheries.noaa.gov/species/riceswhale#conservation management*). The hearing will begin with a brief presentation by NMFS that will give an overview of the proposed critical habitat designation under the ESA. After the presentation, there will be a question and answer session during which members of the public may ask NMFS staff questions about the proposed rule. Following the question and answer session, members of the public will have the opportunity to provide oral comments on the record regarding the proposed rule. In order to

ensure all participants have an opportunity to speak during the hearing, the time allotted for individual oral comments may be limited. Therefore, anyone wishing to make an oral statement at the public hearing for the record is encouraged to prepare a written copy of their comments. All oral comments will be recorded and added to the public comment record for this proposed rule.

Written comments may also be submitted during the public comment period as described under **DATES** and **ADDRESSES**.

Reasonable Accommodations

People needing accommodations so that they may attend and participate at the public hearing should submit a request for reasonable accommodations as soon as possible, and no later than 7 business days prior to the hearing date, by contacting Grant Baysinger (see **FOR FURTHER INFORMATION CONTACT**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 6, 2023.

Samuel D. Rauch, III,

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

[FR Doc. 2023–19643 Filed 9–11–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 88, No. 175
Tuesday, September 12, 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

Federal Crop Insurance Corporation

Risk Management Agency

[Docket ID FCIC–23–0001]

Request for Information on Prevented Planting

AGENCY: Federal Crop Insurance Corporation and Risk Management Agency, Department of Agriculture (USDA).

ACTION: Notice of request for information; reopening of comment period.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) is reopening the comment period for 30 days to allow the public additional time to provide comments on the prevented planting provisions of the Common Crop Insurance Policy (CCIP), Basic Provisions published on May 23, 2023. Prevented planting is a feature of many crop insurance plans that provides a payment to cover certain pre-plant costs for a crop that was prevented from being planted due to an insurable cause of loss. FCIC is interested in public input on the following: additional prevented planting coverage based on harvest prices in situations when harvest prices are higher than established prices initially set by FCIC prior to planting; the requirement that acreage must have been planted to a crop, insured, and harvested, in at least 1 of the 4 most recent crop years; additional levels of prevented planting coverage; prevented planting coverage on contracted crops; and other general prevented planting questions.

DATES: The comment period for the Request for Information on Prevented Planting published on May 23, 2023, (at 88 FR 33081) is reopened. We will consider comments that we receive by October 12, 2023.

ADDRESSES: We invite you to submit comments in response to this notice. Send your comments through the method below:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and search for Docket ID FCIC–23–0001. Follow the instructions for submitting comments.

All comments will be posted without change and will be publicly available on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Francie Tolle; telephone (816) 926–7829; or email *francie.tolle@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

FCIC is reopening the comment period for the Request for Information on Prevented Planting that was published on May 23, 2023, (at 88 FR 33081–33084). The comment period for the original notice closed on September 1, 2023. Based on requests received during the initial comment period, FCIC is reopening the comment period for an additional 30 days to allow the public to comment on the prevented planting provisions.

FCIC serves America's agricultural producers through effective, market-based risk management tools to strengthen the economic stability of agricultural producers and rural communities. FCIC is committed to increasing the availability and effectiveness of Federal crop insurance as a risk management tool. The Risk Management Agency (RMA) administers the FCIC regulations. The Approved Insurance Providers (AIP) sell and service Federal crop insurance policies in every state through a public-private partnership. FCIC reinsures the AIPs who share the risk associated with losses due to natural causes. FCIC's vision is to secure the future of agriculture by providing world class risk management tools to rural America.

Prevented planting coverage pays when a producer is unable to plant an insured crop due to an insured cause of loss. The payment is intended to assist in covering the normal costs associated with preparing the land up to the point of the seed going in the ground (pre-plant costs). These pre-plant costs can include seed, purchase of machinery, land rent, fertilizer, actions taken to ready the field, pesticide, labor, and repairs. Coverage is calculated as a percent of the producer's insurance guarantee (for example, 60 percent for soybeans).

FCIC is interested in all general prevented planting comments but requests public input from stakeholders on the following specific topics:

Prevented Planting Coverage Based on Harvest Prices for Revenue Protection Insurance

Revenue protection is a plan of insurance that provides protection against loss of revenue due to a production loss, price decline or increase, or a combination of both. Under the revenue protection plan of insurance, yield losses are compensated using the harvest-time price if it is higher than the price FCIC projected prior to planting. This compensates producers for the replacement value of lost bushels. This type of coverage was intended to help producers mitigate the risk of having to buy out of delivery contracts they are unable to fulfill due to production losses. Currently, the prevented planting calculation for revenue protection is based on the projected price and does not increase with the harvest price.

Revenue protection is the most popular insurance coverage in the crop insurance program. Under revenue protection, producers may elect a harvest price exclusion option which removes the protection against loss of revenue due to harvest price increase. Over 99 percent of revenue protection policies maintain harvest price coverage.

Following the volume of prevented planting payments for 2019 and 2020, a consistent suggestion emerged to allow prevented planting payments to increase with the harvest price, as is currently done for lost production. Allowing the harvest price for prevented planting payments would not impact most years as there needs to be both an increase in the harvest price and a prevented planting claim. Historical data suggests the additional coverage would increase prevented planting payments by approximately 6 percent on average for those policies with harvest price revenue coverage. Consequently, there would need to be a corresponding increase in premium for these policies.

The following are questions for input regarding prevented planting coverage based on the harvest price:

1. Should prevented planting payments be based on the harvest price or the price used to establish the insurance guarantee (projected price)?

2. What specific advantages or disadvantages do you see for allowing prevented planting coverage to be based on the harvest price?

3. When a producer is prevented from planting, what additional loss does a producer suffer when the harvest price increases and what should be considered to estimate the value of the loss?

4. Do you have any concerns about allowing prevented planting coverage to be based on the harvest price?

Prevented Planting ''1 in 4'' Requirement

Beginning with the 2021 crop year, FCIC revised the prevented planting provisions to implement the ''1 in 4'' requirement nationwide. The ''1 in 4'' requirement states that acreage must have been planted to a crop, insured, and harvested (or if not harvested, adjusted for claim purposes due to an insurable cause of loss) in at least 1 out of the previous 4 crop years. This was meant to reduce prevented planting payments on land that is not generally available to plant, thus lowering insurance costs for all producers. Prior to the 2021 crop year, the ''1 in 4'' requirement was only applicable to the Prairie Pothole National Priority Area and required that the acreage must be physically available for planting.

In late 2022, FCIC announced the ''1 in 4'' requirement would be removed from western states that have experienced significant ongoing drought in recent years. The purpose of removing the requirement in these states was to give FCIC more time to better understand the unique needs of western producers and to also ensure all parties can provide input on the change.

The following are questions regarding the prevented planting ''1 in 4'' requirement:

1. Since the nationwide implementation of the ''1 in 4'' requirement, what situations have created challenges due to this requirement for producers that have been prevented from planting?

2. Do you have recommendations that would make the requirement more flexible for producers while protecting the integrity of the Federal Crop Insurance Program?

3. Are there specific situations that should exempt land from the ''1 in 4'' requirement and why?

4. Should the requirement be removed from specific areas and why?

5. A portion of the ''1 in 4'' requirement allows crops that have been adjusted for claims purposes due to an insured cause of loss to be considered harvested. However, this allowance excludes claims adjusted due to the following causes of loss: flood, excess moisture, and drought. Should the requirement exclude specific causes of loss adjusted for claims purposes and why?

6. Are you aware of additional program integrity measures or safeguards that should be considered beyond what is in place today?

7. Do you believe there should be a limit on the number of consecutive years that a producer is eligible to receive a prevented planting payment on the same acreage? If so, what do you believe the limit should be?

Prevented Planting 10 Percent Additional Coverage

Insureds with additional coverage, a coverage level greater than catastrophic risk protection, may elect an additional level of prevented planting coverage, commonly referred to as buy-up coverage, on or before the sales closing date. The additional coverage level allows producers to better tailor their coverage to match their actual prevented planting costs. The additional level of prevented planting coverage also requires the producer pay additional premium. Prior to the 2018 crop year, two additional prevented planting coverage levels were available, 5 percent (+5) and 10 percent (+10). FCIC removed the +10 additional coverage option beginning in the 2018 crop year. Removing the +10 additional coverage option maintained the balance between providing coverage to producers and the cost to taxpayers. While FCIC has removed the +10 additional coverage option, the +5 additional coverage option is still available.

RMA is considering reinstating the +10 additional coverage option. The following are questions regarding the +10 additional coverage option:

1. What specific advantages or disadvantages do you see regarding reinstating the +10 additional coverage option?

2. If you believe reinstating the +10 additional coverage option will provide needed protection for producers, why is it needed in addition to the current +5 additional coverage option?

3. Do you have any concerns about reinstating the +10 additional coverage option?

Prevented Planting Coverage on Contracted Crops

For several crops, crop types, or specific practices grown under a contract with a processor, a contract price option allows a producer to use their contract price to determine the insurance guarantee. For example, the Contract Price Addendum allows organic certified and transitional producers of many crops to use the price contained in their organic contract for insurance. Currently, when the contract price option is elected, the prevented planting coverage is based on the contract price. However, it has been suggested that prevented planting costs may be the same regardless of whether the producer had a contract. FCIC is requesting input on whether the prevented planting guarantee should use the RMA established price (price election or projected price), regardless of if the contract price option has been elected.

The price election is the amount contained in the actuarial documents that is the value per pound, bushel, ton, carton, or other applicable unit of measure for the purposes of determining premium and indemnity under the policy. The projected price is the price for each crop determined in accordance with the Commodity Exchange Price Provisions.[1] The applicable projected price is used for each crop for which revenue protection is available, regardless of whether you elect to obtain revenue protection or yield protection for the crop.

The following are questions regarding prevented planting coverage on contracted crops that can elect the contract price option:

1. Are pre-planting costs higher for contracted crops? If so, explain.

2. Should prevented planting payments be based on the contract price or RMA's established price (price election or projected price)? Please explain why.

3. If a contract price is used for prevented planting guarantee purposes, should there be any limitations as to when the contract is secured, specifically when a cause of loss is present that may prevent planting?

[1] The Commodity Exchange Price Provisions (CEPP) are used in conjunction with either the Common Crop Insurance Policy Basic Provisions or the Area Risk Protection Insurance Basic Provisions, along with Crop Provisions for the following crops: barley, canola or rapeseed, corn, cotton, grain sorghum, rice, soybeans, sunflowers, and wheat. CEPP specifies how and when the projected and harvest price components will be determined. Updated CEPP documents are on the RMA website at *www.rma.usda.gov/Policy-and-Procedure/Insurance-Plans/Commodity-Exchange-Price-Provisions-CEPP.*

Other General Prevented Planting Questions

1. Do you believe all producers will support paying higher premiums to cover the costs of expanded prevented planting benefits?

2. Are pre-planting costs the same for all causes of loss? For example: Does a multi-year drought leading to failure of irrigation supply have the same pre-planting costs as unexpected flooding prior to planting?

Marcia Bunger,

Manager, Federal Crop Insurance Corporation; and Administrator, Risk Management Agency.

[FR Doc. 2023–19584 Filed 9–11–23; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request: Additional Information To Be Collected From Sub-Grantees Under Uniform Grant Application Package for Discretionary Grant Programs

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: Cooperative agreement recipients of the United States Department of Agriculture's (USDA) Food and Nutrition Service (FNS) plan to collect additional information from sub-grantee applicants associated with the Healthy Meals Incentive Initiative (HMI 2) related to School Food System Transformation. FNS already has approval from the Office of Management and Budget (OMB) for the collection of information associated with the original cooperative agreement under the Uniform Grant Application for Non-Entitlement Discretionary Grants, as approved under OMB Control Number: 0584–0512 (Expiration Date: July 31, 2025). This notice solicits public comment on the additional information proposed for collection.

DATES: To be assured of consideration, written comments must be submitted or postmarked on or before October 12, 2023.

ADDRESSES:

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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were 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.

Comments must be submitted through one of the following methods:

- *Preferred method:* Submit information through the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submissions.
- *Email:* Send comments to *Bethany.Showell@usda.gov* with a subject line ''Sub-grantee information collection under OMB Control No. 0584–0512''

FOR FURTHER INFORMATION CONTACT: Bethany Showell of Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, Virginia 22314, 703–457–6783, or email *bethany.showell@usda.gov.*

SUPPLEMENTARY INFORMATION: Four cooperative agreement recipients of the United States Department of Agriculture's (USDA) Food and Nutrition Service (FNS) will be soliciting requests for funding applications in the Fall of 2023 for sub-grantee proposals associated with the Healthy Meals Incentives Initiative (HMI 2) related to School Food System Transformation.

The Healthy Meals Incentives Initiative (HMI) is already addressed under OMB Approval No. 0584–0512 as the Child Nutrition Healthy Meals Incentive. FNS submitted a non-substantive change request to the Office of Management and Budget (OMB) to provide coverage under the Paperwork Reduction Act (PRA) for the request for proposals from sub-grantees. Out of an abundance of caution and to ensure the public is fully aware upfront of the proposed sub-grantee submittals, FNS is also simultaneously issuing this 30-day **Federal Register** Notice, as explicitly allowed under OMB Control No. 0584–0512.

Four FNS cooperative agreement recipients will ask for sub-grantee applications beyond the uniform grant application package discussed in OMB control 0584–0512. The sub-grantee proposals to be submitted will, in general, address projects that support the development of innovative solutions for K–12 food service transformation. The projects will support collaborative partnerships between non-governmental entities, school food authorities, and the school food industry to encourage new approaches for the improvement of the K–12 food system and to develop creative solutions to provide nutritious foods for school meals. The projects will balance a regional and national focus.

The burden hours associated with the request for applications from sub-grantees and the submittal of proposals, which we're referring to as HMI 2, are delineated in this **Federal Register** Notice and already covered under the ''miscellaneous'' grants portion of the existing OMB-approved information collection. That miscellaneous grants section is intended to encompass grants that FNS could not foresee when FNS submitted information collection request 0584–0512 to OMB.

There are burden hours associated with the cooperative agreement recipients' future drafting and posting of a request for applications from sub-grantees on each cooperator's website and associated communication efforts. The estimate is 10 hours for each of the four cooperators, for a total of 40 hours. These 40 hours would be taken from the existing competitive pre-award burden hours of approximately 4,823 already set aside for miscellaneous grants not explicitly identified in OMB approval number 0584–0512.

There are burden hours associated with the potential for up to 250 sub-grantee applicants to submit one proposal each. The associated burden would be 250 times 4 hours equals 1,000 hours. These 1,000 hours would be taken from the existing competitive pre-award total of 4,823 burden hours set aside for miscellaneous competitive grants in OMB approval number 0584–0512.

There are burden hours for sub-grantees' submittal of a progress report; there is a potential for up to 150 sub-grantees to submit a progress report which is equivalent to up to 150 sub-grantees times 3 hours or 450 reporting hours. These 450 hours would be taken from the post-award total of 770 hours set aside for miscellaneous competitive grants in OMB approval number 0584–0512.

FNS' cooperative agreement recipients who will be requesting project proposals from sub-grantees will utilize comments to be submitted to adjust the collection of additional information as necessary.

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2023–19631 Filed 9–11–23; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Supplemental Nutrition Assistance Program (SNAP) Forms: Applications, Periodic Reporting, and Notices

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a revision of the currently approved collection for the applications, periodic reporting, and notices burden calculations for the Supplemental Nutrition Assistance Program (SNAP).

DATES: Written comments must be received on or before November 13, 2023.

ADDRESSES: Comments may be sent to: Certification Policy Branch, Program Development Division Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, 5th Floor, Alexandria, VA 22314. Comments may also be submitted via fax to the attention of the Certification Policy Branch at 703–305–2022 or via email to *SNAPCPBRules@usda.gov*. Comments will also be accepted through the Federal eRulemaking Portal. Go to *https://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Muhammad Kara by telephone at 703–305–2022.

SUPPLEMENTARY INFORMATION:

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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were 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 use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Supplemental Nutrition Assistance Program Forms: Applications, Periodic Reporting, and Notices.

Form Number: N/A.

OMB Control Number: 0584–0064.

Expiration Date: 2/29/2024.

Type of Request: Revision of a currently approved collection.

Abstract: The information collection addresses the burden estimates associated with applications, which are designed at the State level; client reporting; and notices sent to SNAP participants or applicants (Individuals/Households). Following Federal requirements, State agencies are responsible for determining the eligibility of SNAP households and issuing benefits to those households entitled to benefits under the Food and Nutrition Act of 2008 (the Act), as amended. State agencies obtain demographics such as: names, social security numbers, and date of births of all household members; addresses; and individual or household income information from households through the initial application and recertification processes as well as through various reports to determine program eligibility and benefit levels. SNAP notices sent to individuals or households addresses are the primary method State agencies communicate with SNAP applicants and current participants. This information must be collected from households to ensure that they are eligible for the program and that they receive the correct amount of SNAP benefits.

Additionally, State agencies are limited in the use or disclosure of information obtained from SNAP application forms or contained in case files of participating SNAP households to certain persons, specifically those directly connected with: the administration of SNAP; the administration of other Federal or Federally assisted means-tested programs; the verification of immigration status of aliens; the Office of the Comptroller General of the U.S. for audit and examination authorized by any other provisions of law; local, State, or Federal law enforcement for the purpose of investigating an alleged violation of the Act or SNAP regulations; local, State, or Federal law enforcement for the purpose of investigating if a household member is a fleeing felon or a parole violator; and agencies of the Federal Government for the purposes of collecting the amount of an over issuance from Federal pay.

The Federal procedures for implementing the application and certification procedures, as well as third-party disclosure requests, in the Act are in Parts 271, 272, and 273 of the Title 7 of the Code of Federal Regulations (CFR). Part 271 contains general information and definitions, Part 272 contains requirements for participating State agencies, and Part 273 contains procedures for the certification of eligible households.

In the process of renewing this information collection, FNS modified the burden of some of its reporting and recordkeeping requirements to reflect current SNAP caseload levels and more recent or accurate data sources, where possible. These adjustments represent an increase of 14,957,613.94 total annual burden hours. In addition, FNS added burden hours to reflect program changes related to two final rules, described in more detail below. The burden associated with these rules represents an increase of 827,239.41 total annual burden hours. Together, these updates represent an increase of 85,968,762.93 total annual responses and 15,784,853.36 total annual burden hours for 53 State agencies, 2,724 Local agencies, and 18,802,000 Individuals/Households compared to the last to the burden in the currently approved information collection.

On January 5, 2021, FNS published the final rule, ''Employment and Training Opportunities in the Supplemental Nutrition Assistance Program'' (84 FR 358). This rule requires State agencies to consult with their State workforce development boards on the design of their employment and training (E&T) programs and to document in their E&T State plans the extent to which their E&T programs will be carried out in coordination with activities under title I of the Workforce Innovation and Opportunity Act (WIOA). The final rule also made changes to E&T components including: replacing job search with supervised job search as a component; eliminating job finding clubs; replacing job skills assessments with employability assessments; adding apprenticeships and subsidized employment as allowable activities; requiring a 30-day minimum for provision of job retention services; and allowing those activities from the E&T pilots authorized under the Agricultural Act of 2014 (Pub. L. 113–79) that have had the most demonstrable impact on the ability of participants to find and retain employment that leads to increased

income and reduced reliance on public assistance to become allowable E&T activities. As noted in the final rule, FNS is merging some of the burden associated with this rule with this collection by adding new reporting burden line items. The burden associated with this program change is listed below:

1. Review and modify list of available E&T Services (7 CFR 273.14(b)(5)): Under this requirement, 53 State agencies will each review and modify one list of available E&T opportunities annually. Thus, the information collection activities associated with this requirement results in 53 responses for State agencies. FNS estimates that it will take State agencies approximately 24 hours per response, resulting in 1,272 burden hours. This program change to the burden reflects an increase of 53 total annual responses and 1,272 total annual burden hours for State agencies.

2. Provide list of available Employment and Training (E&T) services (7 CFR 273.14(b)(5)): Under this requirement, 53 State agencies will each send, on average, 103,698.11 lists advising SNAP households not otherwise exempt from the general work requirements in writing of available employment and training (E&T) opportunities at the time of recertification if these individuals are members of households that contain at least one adult, with no elderly or disabled individuals, and with no earned income at their last certification or required report. Thus, the information collection activities associated with this requirement result in 5,496,000 responses for State agencies. FNS estimates that it takes States approximately one minute (0.0200 hours) per response, resulting in 109,920 burden hours. This program change to the burden reflects an increase of 5,496,000 total annual responses and 109,920 total annual burden hours for State agencies. FNS also estimates that 5,496,000 individuals will each receive and read one list of available E&T services. Thus, the information collection activities associated with this requirement results in 5,496,000 responses for individuals. FNS estimates that it takes individuals approximately one minute (0.0200 hours) per response, resulting in 109,920 burden hours. This adjustment to the burden reflects an increase of 5,496,000 total annual responses and 109,920 total annual burden hours for households. FNS notes that while the household burden associated with this requirement is outlined in the final rule published January 5, 2021, FNS has not previously delineated the State agency burden associated with this requirement. In this information collection renewal, FNS chose to delineate the State agency burden associated with this requirement to reflect the process of State agencies sending the list of available E&T services and associated burden more accurately.

3. Inform Able-Bodied Adults without Dependents (ABAWD) of the ABAWD work requirement (7 CFR 273.7(c)(1)(ii) & (iii) & 273.24(b)(8)): Under this requirement, 53 State agencies will each send, on average, 50,943.40 notices informing able-bodied adults without dependents (ABAWD) about the ABAWD work requirement and time limit. Thus, the information collection activities associated with this requirement result in 2,700,000 responses for State agencies. FNS estimates that it will take each State agency approximately 5 minutes (0.0830 hours) per response, resulting in 224,100 burden hours. This program change to the burden reflects an increase of 2,700,000 total annual responses and 224,100 total annual burden hours for State agencies. FNS also estimates that 2,700,000 individuals subject to the ABAWD work requirement and time limit will each read one notice. Thus, the information collection activities associated with this requirement results in 2,700,000 responses for households. FNS estimates that it takes households approximately 5 minutes (0.0830 hours) per response, resulting in 224,100 burden hours. This program change to the burden reflects an increase of 2,700,000 total annual responses and 224,100 total annual burden hours for households.

4. Inform Employment and Training (E&T) Participants of Provider Determination (7 CFR 273.7(c)(18)(i)): Under this requirement, 53 State agencies will each send, on average, 867.92 notifications to E&T participants who receive a provider determination by an E&T provider. Thus, the information collection activities associated with this requirement result in 46,000 responses for State agencies. FNS estimates it will take State agencies approximately 5 minutes (0.0830 hours) per response, resulting in 3,818 burden hours. This program change to the burden reflects an increase of 46,000 total responses and 3,818 burden hours for State agencies. FNS also estimates that 46,000 E&T participants will each read one provider determination. Thus, the information collection activities associated with this requirement result in 46,000 responses for households. FNS estimates that it takes households approximately 5 minutes (0.0830 hours) per response, resulting in 3,818 burden hours. This adjustment to the burden reflects an increase of 46,000 total annual responses and 3,818 total annual burden hours for households.

On October 3, 2022, FNS published the interim final rule, ''Supplemental Nutrition Assistance Program: Requirement for Interstate Data Matching to Prevent Duplicate Issuances'' (87 FR 59633). This rule requires State agencies to provide information to the National Agency Clearinghouse (NAC) regarding individuals receiving SNAP benefits in their States to ensure they are not already receiving benefits in another State. It also requires State agencies to take appropriate action with respect to each indication from the NAC that an individual may already be receiving SNAP benefits from another State agency. FNS is merging most of the burden associated with this rule with this collection by updating existing verification and noticing burden estimates for both State agencies and individuals/households. The estimates below are solely related to the program changes related to the rule, but FNS notes that it also made adjustments to the following line items related to SNAP caseload levels and participation. These adjustments are delineated further in the burden table, but for purposes of this notice, FNS is focusing on the program changes specifically. The burden associated with this program change is listed below:

1. Verification: Questionable Information (7 CFR 273.2(f)(1)&(2)): Under this requirement, 53 State agencies will each send, on average, 4,611.57 notifications to households who have questionable and/or unclear information following a positive NAC match. Thus, the information collection activities associated with this requirement result in 244,413.10 responses for State agencies. FNS estimates that it takes States approximately 6 minutes (0.1002 hours) per response, resulting in 24,490.19 burden hours. This program change to the burden reflects an increase of 244,413.10 total annual responses and 24,490.19 total annual burden hours for States agencies. FNS also estimates that 244,413.10 households will each read one notification. Thus, the information collection activities associated with this requirement result in 244,413.10 responses for households. FNS estimates that it takes households approximately 4 minute (0.0668 hours) per response, resulting in 16,326.79 burden hours. This program change to the burden reflects an increase of

244,413.10 total annual responses and 16,326.79 total annual burden hours for households.

2. Notice of Adverse Action (7 CFR 273.13(a)): Under this requirement, 53 State agencies will be required to issue a combined notice for a match on an individual during the certification period prior to a change in SNAP benefit allotment to a participant as a result of a match found through the NAC. Thus, the information collection activities associated with this requirement results in 409,709.52 responses for State agencies. FNS estimates that it takes States approximately 3 minutes (0.0501 hours) per response, resulting in 20,526.45 annual burden hours. This program change to the burden reflects an increase of 409,709.52 total annual responses and 20,526.45 total annual burden hours for States agencies. FNS also estimates that 409,709.52 households will each receive a combined notice of match results and notice of adverse action as a result of a positive NAC match received during the certification period. Thus, the information collection activities associated with this requirement result in 409,709.52 responses for households. FNS estimates that it takes households approximately 5 minutes (0.0835 hours) per response, resulting in 34,210.75 burden hours. This program change to the burden reflects an increase of 409,709.52 total annual responses and 34,210.75 total annual burden hours for households.

3. Notice of Match Results (7 CFR 237.12(c)(3)(iii)): Under this requirement, 53 State agencies will be required to issue a notice of match results, as necessary, to a household following a positive NAC match on an applicant, recertifying individual, or a newly added household member. Thus, the information collection activities associated with this requirement results in 409,709.52 responses for State agencies. FNS estimates that it takes States approximately 3 minutes (0.0501 hours) per response, resulting in 20,526.45 annual burden hours. This program change reflects an increase of 409,709.52 total annual responses and 20,526.45 total annual burden hours for States agencies. FNS also estimates that 409,709.52 households will each receive a notice of match results. Thus, the information collection activities associated with this requirement results in 409,709.52 responses for households. FNS estimates that it takes households approximately 5 minutes (0.0835 hours) per response, resulting in 34,210.75 burden hours. This program change to the burden reflects an increase of 409,709.52 total annual responses and 34,210.75 total annual burden hours for households.

Inclusive of all burden adjustments and program changes made as part of this renewal, FNS is requesting an overall burden of 1,023,763,956 total annual responses and 139,973,104 total annual burden hours. These burden estimates include 866,533,635 total annual responses and 135,372,295 total annual burden hours for reporting by State agencies and Individuals/ Households. The estimates also include 157,228,413 total annual responses and 4,599,855 total annual burden hours for recordkeeping by Local agencies. Finally, the estimates include 1,908 total annual responses and 954 total annual burden hours for third- party disclosures by State agencies.

The currently approved burden for this information collection is 937,795,193 total annual responses and 124,188,251 total annual burden hours. Thus, when compared to the burden in the currently approved information collection, the adjustments and program changes in this renewal represent an increase of 15,784,853.36, rounded to 15,784,853, total annual responses and 1,023,763,955.93, rounded to 1,023,763,956, total annual burden hours.

A breakdown of the burden estimates per type of affected public is provided below.

Reporting Burden for State Agencies

Estimated Total Number of Respondents: 53.

Estimated Frequency of Responses per Respondents: 8,285,674.69.

Estimated Time per Response: 0.13.

Estimated Total Annual Reporting Burden: 58,835,613.04.

Reporting Burden for Individual/ Households

Estimated Total Number of Respondents: 18,802,000.

Estimated Frequency of Responses per Respondents: 22.73.

Estimated Time per Response: 0.18.

Estimated Total Annual Reporting Burden: 76,536,682.18.

Recordkeeping Burden for Local Agencies

Estimated Total Number of Recordkeepers: 2,724.

Estimated Frequency of Responses per Recordkeeper: 57,719.68.

Estimated Total Annual Responses: 157,228,413.

Estimated Time per Record: 0.03.

Estimated Total Annual Recordkeeping Burden: 4,599,854.90.

Third Party Disclosure for State Agencies

Estimated Total Number of Respondents: 53.

Estimated Frequency of Responses per Respondents: 36.00.

Estimated Time per Response: 0.50.

Estimated Total Annual Reporting Burden: 954.00.

Total Burden Estimate

Estimated Overall Total Number of Respondents: 18,804,777.

Estimated Overall Frequency of Responses per Respondents: 54.44.

Estimated Overall Total Annual Responses: 1,023,763,955.93.

Estimated Overall Time per Response: 0.14.

Estimated Overall Grand Total Annual Reporting and Recordkeeping Burden: 139,973,104.13.

FNS SNAP Forms ICR Total Burden Estimate

[OMB Control No. 0584–0064]

Affected public	Estimated number of respondent	Estimated responses annually per respondent	Estimated total annual responses	Estimated average number of hours per response	Estimated total hours
Reporting Burden:					
State/Local/Tribal Governments	53	8,285,674.69	439,140,758.62	0.13	58,835,613.04
Households	18,802,000	22.73	427,392,876.32	0.18	76,536,682.18
Total Estimated Reporting Burden	18,802,053	46.09	866,533,634.93	0.16	135,372,295.23
Recordkeeping Burden:					
State/Local/Tribal Governments	2,724	57,719.68	157,228,413	0.03	4,599,854.90
Total Estimated Recordkeeping Burden	2,724	57,719.68	157,228,413	0.03	4,599,854.90
Third-Party Disclosures:					
State/Local/Tribal Governments	53	36.00	1,908.00	0.50	954.00

FNS SNAP FORMS ICR TOTAL BURDEN ESTIMATE—Continued
[OMB Control No. 0584–0064]

Affected public	Estimated number of respondent	Estimated responses annually per respondent	Estimated total annual responses	Estimated average number of hours per response	Estimated total hours
Total Estimated Third-Party Disclosures Burden	53	36.00	1,908.00	0.50	954.00
Total Burden for 0584–0064	18,804,777	54.44	1,023,763,955.93	0.14	139,973,104.13

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2023–19633 Filed 9–11–23; 8:45 am]

BILLING CODE 3410–30–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 Agricultural Surveys Program. Revision to burden hours will 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 November 13, 2023 to be assured of consideration.

ADDRESSES:

- *Email: ombofficer@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) 720–4333. 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: Agricultural Surveys Program.

OMB Control Number: 0535–0213.

Expiration Date of Approval: April 30, 2024.

Type of Request: 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 collect, 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. The Agricultural Surveys Program contains a series of surveys that obtains basic agricultural data from farmers, ranchers, and feedlots throughout the Nation for preparing agricultural estimates and forecasts of crop acreage, yield, and production; stocks of grains and soybeans; hog and pig numbers; sheep inventory and lamb crop; cattle inventory; cattle on feed; grazing fees; and land values. Uses of the statistical information collected by these surveys are extensive and varied. Producers, farm organizations, agribusinesses, commodity exchanges, State and national farm policy makers, and government agencies are important users of these statistics. Agricultural statistics are used to plan and administer other related Federal and State programs in such areas as consumer protection, conservation, foreign trade, education, and recreation.

Revisions to burden are needed due to changes in the size of the target population, sample design, and minor changes in questionnaire design.

These data will be collected under the 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 Public Law 104–13 (44 U.S.C. 3501, *et seq.*) 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 will range from 5 to 40 minutes per response.

Respondents: Farmers, Ranchers and Feed Lots.

Estimated Number of Respondents: 492,000.

Estimated Total Annual Burden on Respondents: 185,000 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, August 30, 2023.

Kevin L. Barnes,

Associate Administrator.

[FR Doc. 2023–19610 Filed 9–11–23; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS–21–Admin–0021]

Notice of Request for Approval of a New Information Collection

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities 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 Rural Business-Cooperative Service, Rural Housing Service, and the Rural Utilities Service, agencies of the Rural Development mission area within the U.S. Department of Agriculture (USDA), hereinafter collectively referred to as the Agency to request approval for a new information collection in support of compliance with applicable acts for planning and performing construction and other development work.

DATES: Comments on this notice must be received by November 13, 2023.

ADDRESSES: Comments may be submitted by the following method:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Lynn Gilbert, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 690–2682. Email *lynn.gilbert@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that Rural Development is submitting to OMB for a new collection.

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, or other technological collection techniques or other forms of information technology.

Comments may be sent by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''RHS'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select RHS–21–Admin–0021 to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

Title: 7 CFR 1927—Common Forms Package for Real Estate Title Clearance and Loan Closing.

OMB Number: 0575–New.

Expiration Date of Approval: Three years from approval date.

Type of Request: New information collection.

Abstract: The information collection under OMB Number 0575-New will enable the Agencies to effectively extend financial assistance to construct, improve, alter, repair, replace or rehabilitate dwellings, farm buildings, and/or related facilities to provide decent, safe, and sanitary living conditions and adequate farm buildings and other structures in rural areas. Title clearance is required to assure the Agency(s) that the loan is legally secured and has the required lien priority.

RD will be collecting information to assure that those participating in this program remain eligible to proceed with loan closing and to ensure that loans are made with Federal funds are legally secured. The respondents are individuals or households, businesses and non-profit institutions. The information required is used by the USDA personnel to verify that the required lien position has been obtained. The information is collected at the field office responsible for processing a loan application through loan closing. The information is also used to ensure the program is administered in manner consistent with legislative and administrative requirements. If not collected, the Agency would be unable to determine if the loan is adequately and legally secure. RD continually strives to ensure that information collection burden is kept to a minimum.

Information for the RD forms and their usage in this collection package are included in this supporting statement.

Estimate of Burden: RD is requesting approval for one respondent and a one-hour place holder in order for OMB to issue a control number for these forms. The burden for each of the forms will be accounted for within the individual Rural Development program collection packages using the form(s).

Respondents: Individuals or Households, Businesses, Closing agents/Attorneys and the field office staff.

Estimated Number of Responses per Respondent per Form in package:

Form Nos.	Responses per respondent
1927–5, 8, 9, 10, 15, 19 and 20	1
3550–25	1

Comments from interested parties are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2023–19675 Filed 9–11–23; 8:45 am]

BILLING CODE 3410–XV–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Agency Information Collection Activities; Proposals, Submissions, and Approvals: Reactive Hazard Study Survey of Industry Practices

AGENCY: United States Chemical Safety and Hazard Investigation Board (CSB).

ACTION: 30-Day notice of submission of information collection request (ICR) approval and request for comments.

SUMMARY: The proposed information collection request (ICR) renewal described below will be submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. The Chemical Safety Board (CSB) is soliciting public comments on this proposed collection renewal. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: Comments should be sent no later than 5 p.m. EDT on Friday, October 13, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions within 30 days of publication of this notice: OMB, Office of Information and Regulatory Affairs, Attention: Chemical Safety Board Desk Officer, Fax Number: (202) 395–5806 *OR,* Email: *OIRA_submission@omb.eop.gov.*

Additionally, written comments and recommendations for the proposed information collection can be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* To find this particular information collection request, select ''Currently under 30-day Review—Open for Public Comments'' or use the search function.

Requests for information, including copies of the information collection proposed and supporting documentation should be directed to: Tamara Qureshi, Assistant General Counsel, U.S. Chemical Safety and Hazard Investigation Board, at *reactives@csb.gov.*

FOR FURTHER INFORMATION CONTACT: Tamara Qureshi, Assistant General Counsel, U.S. Chemical Safety and Hazard Investigation Board, 1750 Pennsylvania Ave. NW, Suite 910, Washington, DC 20006, *report@csb.gov,* or 202–261–7600.

SUPPLEMENTARY INFORMATION:

Title: CSB Reactive Hazard Study Survey of Industry Practices.

Type of Request: Approval.

Abstract: The enabling statute of the Chemical Safety and Hazard Investigation Board (CSB) provides that the CSB is ''authorized to conduct research and studies with respect to the potential for accidental releases, whether or not an accidental release has occurred, where there is evidence which indicates the presence of a potential hazard or hazards.'' 42 U.S.C. 7412(r)(6)(F).

In August 2000, the CSB initiated a review of reactive hazards nationwide. The purpose of the investigation was to develop recommendations to reduce the number and severity of such incidents. The CSB published Hazard Investigation: Improving Reactive Hazard Management on September 17, 2002. The CSB issued a total of 24 recommendations to 15 organizations. Only two recommendations remain.

This information collection request will assist the CSB in updating its 2002 study, ''Hazard Investigation: Improving Reactive Hazard Management.'' On behalf of the CSB, the Federal Research Division (FRD) within the Library of Congress is conducting the study to reflect the current research, data, and company safety policies concerning reactive chemical incidents.

For this study, FRD on behalf of CSB will collect survey data from 15 randomly selected small, medium, and large companies that use reactive chemicals. FRD will also conduct interviews with nine stakeholders, who may include industry representatives, regulatory agencies, professional safety organizations, trade associations, trade unions, and/or public advocacy groups.

Type of Respondents: All the respondents will be private sector businesses that use reactive chemicals that voluntarily submit to interviews or the survey.

Estimate Annual Number of Respondents: 24.

Frequency of Use: Once. This survey is part of a study.

Small Businesses or Organizations Affected: No. Although the CSB is contacting small businesses, this survey is voluntary. Additionally, the CSB anticipates a total of 15 companies will respond.

Estimated Number of Annual Responses: 24.

Estimated Average Burden Hours per Response: 3 hours. The survey should take a representative from each of the companies randomly selected two to four hours to complete. The estimated financial burden for one process safety manager to take this survey is $144.45. For 15 surveys, the total cost of process safety managers' time is estimated to be $2,166.75.[1] The interviews will take no longer than 90 minutes each. The estimated financial burden for one chemist to engage in an interview is $64.28. For nine interviews, the total cost of chemists' time is estimated to be $578.48.[2] The combined total cost of this data collection on the American public is estimated to be $2,745.23.

Estimated Total Annual Burden Hours: 45 hours.

Need for and Use of Information: This research is vital because safely conducting chemical reactions is essential for the chemical manufacturing industry. Chemical reactive hazards can rapidly release large quantities of heat, energy, and gaseous byproducts. Uncontrolled reactions have led to serious explosions, fires, and toxic emissions. The impacts may be severe in terms of death and injury to people, damage to physical property, and effects on the environment and surrounding communities. Since the publication of the 2002 report, incidents caused by uncontrolled chemical reactions have persisted. This fact suggests the need to continue to evaluate existing standards and improve the management of reactive hazards in response to changes within the chemical manufacturing industry over the past two decades.

Researchers will use quantitative and qualitative mixed methods to analyze the collected industry information. The analysis will identify trends and present insights which will enhance the CSB's capacity to respond to future reactive chemical incidents and to inform industry stakeholders of the best practices in process safety protocols.

Comment is Invited: Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including

[1] A 3-hour time burden for a process safety manager (which is a reasonable if not expected interviewee for a surveyed company) multiplied by the number of surveys; an average Process Safety Manager makes $100,154 as of September 15, 2022, which in terms of hourly compensation is $48.15. $48.15 hourly pay * 3 hours to complete * 15 surveys = $2,166.75. See ''Process Safety Manager Salaries,'' Glassdoor, Updated September 15, 2022, *https://www.glassdoor.com/Salaries/process-safety-manager-salary-SRCH_KO0,22.htm.*

[2] A 90-minute time burden for a chemist (which is a reasonable representative for these stakeholders) multiplied by the number of planned interviews; a chemist's average salary is $89,130 as of May 2021, which is $42.85 per hour. $42.85 hourly pay * 1.5 hours to complete * 9 interviews = $578.48. See ''Occupational Employment and Wage Statistics, May 2021, 19–2031 Chemists,'' Bureau of Labor Statistics, March 31, 2022, *https://www.bls.gov/oes/current/oes192031.htm.*

whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. To view the draft protocol, please see: *https://www.csb.gov/assets/1/6/csb_frd_reactivessurvey_draft_(002).pdf.*

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. As of the time of this notice, the CSB has not received any comments. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: September 7, 2023.

Tamara Qureshi,

Assistant General Counsel, Chemical Safety and Hazard Investigation Board.

[FR Doc. 2023–19659 Filed 9–11–23; 8:45 am]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Census Bureau

[Docket Number: 230829–0206]

RIN 0607–XC071

Qualifying Urban Areas for the 2020 Census; Correction

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice, corrections.

SUMMARY: On December 29, 2022, the Bureau of the Census (Census Bureau) published a **Federal Register** Notice listing the areas that qualified as urban areas based on the results of the 2020 Census. With this notice, the Census Bureau is correcting the list of urban areas and modifying the population, housing, and land area of a small number of urban areas where a processing error was discovered.

DATES: This notice is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Rikki Wortham, Geography Division, U.S. Census Bureau, via email at *geo.urban@census.gov* or telephone at 301–763–1128.

SUPPLEMENTARY INFORMATION:

Corrections

In the **Federal Register** of December 29, 2022, in FR Doc 2022–28286, on page 80117, in the list of Urban areas, the Atlanta, GA Population is corrected from ''4,999,259'' to ''5,100,112'', Housing is corrected from ''1,998,084'' to ''2,035,642'', and Land Area is corrected from ''2,450.5'' to ''2,553.1''. These corrections resolve a processing error and reflect the adjusted boundary between Atlanta, GA and Gainesville, GA urban areas.

In the **Federal Register** of December 29, 2022, in FR Doc 2022–28286, on page 80127, in the list of Urban areas, the Gainesville, GA Population is corrected from ''265,218'' to ''164,365'', Housing is corrected from ''100,455'' to ''62,897'', and Land Area is corrected from ''251.7'' to ''149.1''. These corrections resolve a processing error and reflect the adjusted boundary between Atlanta, GA and Gainesville, GA urban areas.

In the **Federal Register** of December 29, 2022, in FR Doc 2022–28286, on page 80133, in the list of Urban areas, delete Laplace—Lutcher—Gramercy, LA and associated Population, Housing, and Land Area characteristics. This correction resolves a processing error and reflects the merger of this previously identified area with the New Orleans, LA Urban Area.

In the **Federal Register** of December 29, 2022, in FR Doc 2022–28286, on page 80138, in the list of Urban areas, the New Orleans, LA Population is corrected from ''914,531'' to ''963,212'', Housing is corrected from ''421,006'' to ''441,065'', and Land Area is corrected from ''239.5'' to ''270.3''. These corrections resolve a processing error and reflect the merger of this area with the previously identified Laplace—Lutcher—Gramercy, LA Urban Area.

In the **Federal Register** of December 29, 2022, in FR Doc 2022–28286, on page 80144, in the list of Urban areas, the San Francisco—Oakland, CA Population is corrected from ''3,269,385'' to ''3,515,933'', Housing is corrected from ''1,288,912'' to '' 1,391,873'', and Land Area is corrected from ''428.7'' to ''513.8''. These corrections resolve a processing error and reflect the merger of this area with the previously identified San Rafael—Novato, CA Urban Area.

In the **Federal Register** of December 29, 2022, in FR Doc 2022–28286, on page 80144, in the list of Urban areas, delete San Rafael—Novato, CA and associated Population, Housing, and Land Area characteristics. This correction resolves a processing error and reflects the merger of this previously identified area with the San Francisco—Oakland, CA Urban Area.

Complete Errata and a list of 2020 Census Urban Area applications and products affected by these corrections can be found in the ''2020 Census Urban Area Errata'' on the Census Urban and Rural page: *https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural.html.*

Robert L. Santos, Director, Census Bureau, approved the publication of this notice in the **Federal Register**.

Dated: September 5, 2023.

Shannon Wink,

Program Analyst, Policy Coordination Office, U.S. Census Bureau.

[FR Doc. 2023–19558 Filed 9–11–23; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Peter Sotis, Inmate Number: 13640–018, FCI Coleman, P.O. Box 1031, Coleman, FL 33521; Order Denying Export Privileges

On January 12, 2022, in the U.S. District Court for the Southern District of Florida, Peter Sotis (''Sotis'') was convicted of violating 18 U.S.C. 371, the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*) (''IEEPA'') and 18 U.S.C. 554. Specifically, Sotis was convicted of conspiring to export, exported and attempted to export and smuggling four (4) rEvo III rebreathers from the United States to Libya without the required license or written approval. As a result of his conviction, the Court sentenced him to 57 months in prison, three years of supervised release and a $300 special assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371, IEEPA and 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Sotis conviction for violating 18 U.S.C. 371, IEEPA and 18 U.S.C. 554. As provided

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Sotis to make a written submission to BIS. 15 CFR 766.25.[2] BIS received and considered a written submission from Sotis.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Sotis's export privileges under the Regulations for a period of 10 years from the date of Sotis's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Sotis had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until January 12, 2032, Peter Sotis, with a last known address of Inmate Number: 13640–018, FCI Coleman, P.O. Box 1031, Coleman, FL 33521 and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Sotis by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Sotis may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Sotis and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until January 12, 2032.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–19681 Filed 9–11–23; 8:45 am]

BILLING CODE 3510–DT–P

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Ruben Beltran Pedroza, Inmate Number: 01225–510, FCI La Tuna, Federal Correctional Institution, P.O. Box 3000, Anthony, NM 88021; Order Denying Export Privileges

On November 3, 2022, in the U.S. District Court for the Western District of Texas, Ruben Beltran Pedroza (''Pedroza'') was convicted of violating 18 U.S.C. 554(a). Specifically, Pedroza was convicted of smuggling a Smith & Wesson M&P Shield .40 pistol, SN: HDY2067 from the United States to Mexico. As a result of his conviction, the Court sentenced Pedroza to 34 months of confinement, with credit for time served, three years of supervised release and a $100 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Pedroza's conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Pedroza to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Pedroza.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Pedroza's export privileges under the Regulations for a period of five years from the date of Pedroza's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Pedroza had an interest at the time of his conviction.[3]

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders

Accordingly, it is hereby *ordered:*

First, from the date of this Order until November 3, 2027, Ruben Beltran Pedroza, with a last known address of Inmate Number: 01225–510, FCI La Tuna, Federal Correctional Institution, P.O. Box 3000, Anthony, NM 88021, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Pedroza by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Pedroza may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Pedroza and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until November 3, 2027.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–19678 Filed 9–11–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Jonathan Santiago, Inmate Number: 01218–510, MCFP Springfield, Federal Medical Center, P.O. Box 4000, Springfield, MO 65801; Order Denying Export Privileges

On October 25, 2022, in the U.S. District Court for the Western District of Texas, Jonathan Santiago (''Santiago'') was convicted of violating 18 U.S.C. 554(a). Specifically, Santiago was convicted of smuggling a Smith & Wesson M&P Shield .40 pistol, SN: HDY2067 from the United States to Mexico. As a result of his conviction, the Court sentenced Santiago to 42 months of confinement, with credit for time served and three years of supervised release.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Santiago's conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Santiago to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Santiago.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Santiago's export privileges under the Regulations for a period of seven years from the date of Santiago's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Santiago had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until October 25, 2029, Jonathan Santiago, with a last known address of Inmate Number: 01218–510, MCFP Springfield, Federal Medical Center, P.O. Box 4000, Springfield, MO 65801, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Santiago by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Santiago may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Santiago and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until October 25, 2029.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–19679 Filed 9–11–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Nicholas Ayala, Inmate Number: 97331–509, FCI Edgefield, P.O. Box 725, Edgefield, SC 29824, Order Denying Export Privileges

On November 16, 2022, in the U.S. District Court for the Southern District of Florida, Nicholas Ayala (''Ayala'') was convicted of violating 18 U.S.C. 371 and 18 U.S.C. 554. Specifically, Ayala was convicted of conspiring to smuggle various handguns and firearms from the United States to Ecuador. As a result of his conviction, the Court sentenced him to 36 months in prison, three years of supervised release, and a $400 special assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371 and 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Ayala's conviction for violating 18 U.S.C. 371 and 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Ayala to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Ayala.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Ayala's export privileges under the Regulations for a period of 10 years from the date of Ayala's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Ayala had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until November 16, 2032, Nicholas Ayala, with a last known address of Inmate Number: 97331–509, FCI Edgefield, P.O. Box 725, Edgefield, SC 29824, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Ayala by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Ayala may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Ayala and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until November 16, 2032.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–19680 Filed 9–11–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–820]

Silicon Metal From Malaysia: 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 determines that sales of silicon metal from Malaysia were not sold in the United States at less than normal value (NV) during the period of review (POR), February 1, 2021, through July 31, 2022. Interested parties are invited to comment on these preliminary results.

DATES: Applicable September 12, 2023.

FOR FURTHER INFORMATION CONTACT: Rachel Jennings, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1110.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 2021, Commerce published in the **Federal Register** an antidumping duty order on silicon metal from Malaysia.[1] On August 2, 2022, we published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.[2] On October 11, 2022, based on a timely request for an administrative review, Commerce initiated an administrative review with respect to PMB Silicon Sdn. Bhd (PMB Silicon).[3]

On April 21, 2023, Commerce extended the time limit for completing the preliminary results of this review until August 31, 2023.[4] For a complete description of the events between the initiation of this review and these preliminary results, *see* the Preliminary Decision Memorandum.[5]

Scope of the Order

The merchandise covered by the scope of this *Order* is silicon metal from Malaysia.[6]

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (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. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx*.

Preliminary Results of the Review

We preliminarily determine that the following estimated weighted-average dumping margin exists during the period February 1, 2021, through July 31, 2022:

Exporter/producer	Weighted-average dumping margin (percent)
PMB Silicon Sdn. Bhd	0.00

Verification

As provided in section 782(i)(3) of the Act, Commerce intends to verify the information relied upon here in advance of the final results of this review.

[1] *See Silicon Metal from Malaysia: Antidumping Duty Order,* 86 FR 46677 (August 19, 2021) (*Order*).

[2] *See Antidumping and Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List,* 87 FR 47187 (August 2, 2022).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 61278 (October 11, 2022).

[4] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2021–2022,'' dated April 21, 2023.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Silicon Metal from Malaysia; 2021–2022,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] For a complete description of the scope of the *Order, see* Preliminary Decision Memorandum.

Disclosure and Public Comment

Commerce intends to disclose to interested parties the calculations performed for these preliminary results 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 no later than seven days after the date on which the last verification report is issued in this administrative review. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs. 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.[7] Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.[8]

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, filed electronically via 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. 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 issues raised in the case briefs, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act, unless otherwise extended.

Assessment Rates

Upon issuance of the final results of this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[9] If PMB Silicon'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 assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). We intend to instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is not zero or *de minimis*. If PMB Silicon's weighted-average dumping margin is zero or *de minimis* in the final results of review, or if an importer-specific or customer-specific assessment rate is zero or *de minimis*, Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties. 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 deposits of estimated duties, where applicable.[10]

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by PMB Silicon for which PMB Silicon did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate established in the original less-than-fair-value (LTFV) investigation (*i.e.,* 12.27 percent),[11] if there is no rate for the intermediate company(ies) involved in the transaction.[12]

Commerce intends to issue instructions to CBP no earlier than 35 days after the publication date 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 for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the finals results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for PMB Silicon in the final results of review 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 merchandise exported by a company not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment in which it was reviewed; (3) if the exporter is not a firm covered in this review or the original LTFV investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 12.27 percent,[13] the all-others rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless otherwise extended, 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, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

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 the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

Commerce is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

[7] *See* 19 CFR 351.309(c) and (d)(2); *see also* 19 CFR 351.303 (for general filing requirements).

[8] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[9] *See* 19 CFR 351.212(b)(1).

[10] *See* section 751(a)(2)(C) of the Act.

[11] *See Order.*

[12] For a full description of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[13] *See Order,* 86 FR 46678.

Dated: August 30, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2023–19627 Filed 9–11–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–117]

Wood Mouldings and Millwork Products From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; and Partial Rescission; 2020–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Yinfeng Imp & Exp Trading Co., Ltd./Fujian Province Youxi City Mangrove Wood Machining Co., Ltd. (Yinfeng/Mangrove), Fujian Jinquan Trade Co., Ltd./Fujian Province Youxi County Baiyuan Wood Machining Co., Ltd. (Jinquan/Baiyuan) and 29 non-individually examined exporters of wood mouldings and millworks products (WMMP) from the People's Republic of China (China) did not sell subject merchandise to the United States at prices below normal value (NV) during the period of review (POR), August 12, 2020, through January 31, 2022. Commerce further determines that Fujian Shunchang Shengsheng Wood Industry Limited Company (Shunchang Shengsheng), Xiamen Jinxi Building Material Co., Ltd. (Xiamen Jinxi), and Zhangzhou Green Wood Industry and Trade Co., Ltd. (Greenwood) made no shipments of subject merchandise during the POR and that Gaomi Hongtai Home Furniture Co., Ltd. has not established eligibility for a separate rate and, therefore, is part of the China-wide entity. Additionally, we are rescinding this administrative review with respect to three companies that are not eligible for review because they either had no reviewable entries during the POR or are U.S. resellers.

DATES: Applicable September 12, 2023.

FOR FURTHER INFORMATION CONTACT: Samantha Kinney or Brian Smith, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2285 or (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2023, Commerce published the *Preliminary Results*.[1] For events subsequent to the *Preliminary Results, see* the Issues and Decision Memorandum.[2]

Scope of the Order [3]

The merchandise covered by the *Order* is wood mouldings and millwork products, which are primarily classifiable under subheadings 4409.10.0500, 4409.10.1020, 4409.10.1040, 4409.10.1060, 4409.10.1080, 4409.10.4010, 4409.10.4090, 4409.10.4500, 4409.10.5000, 4409.10.9020, 4409.10.9040, 4409.22.0590, 4409.22.1000, 4409.22.4000, 4409.22.5000, 4409.22.5020, 4409.22.5040, 4409.22.5060, 4409.22.5090, 4409.22.9000, 4409.22.9020, 4409.22.9030, 4409.22.9045, 4409.22.9060, 4409.22.9090, 4409.29.0665, 4409.29.1100, 4409.29.4100, 4409.29.5100, 4409.29.9100, 4412.99.5115, 4412.99.9500, 4418.91.9095, and 4421.91.9780 of the of the Harmonized Tariff Schedule of the United States (HTSUS). WMMP may also enter under HTSUS numbers 4409.10.6000, 4409.10.6500, 4409.22.6000, 4409.22.6500, 4409.29.6100, 4409.29.6600, 4412.41.0000, 4412.42.0000, 4412.49.0000, 4412.91.5115, 4412.92.5215, 4412.99.9700, 4418.20.4000, 4418.20.8030, 4418.20.8060, 4418.91.9195, 4418.99.9095, 4418.99.9195, 4421.91.9880, 4421.99.9780, and 4421.99.9880. While the HTSUS subheading and ASTM specification are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by interested parties in briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is provided in Appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our verification findings, review of the record, and comments received from interested parties regarding our *Preliminary Results,* we made changes to the margin calculations for Jinquan/Baiyuan and Yinfeng/Mangrove.[4]

Final Determination of No Shipments

In the *Preliminary Results,* we preliminarily determined that Shunchang Shengsheng, Xiamen Jinxi, and Green Wood had no shipments of subject merchandise to the United States during the POR.[5] No party filed comments with respect to this preliminary finding and we received no information to contradict it. Therefore, we continue to find that these three companies had no shipments of subject merchandise during the POR and will issue appropriate liquidation instructions that are consistent with our ''automatic assessment'' clarification for these final results.[6]

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[1] *See Wood Mouldings and Millwork Products from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments, and Rescission in Part; 2020–2022,* 88 FR 14139 (March 7, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Wood Mouldings and Millwork Products from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2020–2022 Antidumping Duty Administrative Review,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Wood Mouldings and Millwork Products from the People's Republic of China: Amended Final Antidumping Duty Determination and Antidumping Duty Order,* 86 FR 9486 (February 16, 2021) (*Order*).

[4] *See* Issues and Decision Memorandum; *see also* Memorandum, ''Final Results Calculation Memorandum for Jinquan/Baiyuan,'' dated concurrently with this notice; and Memorandum, ''Final Results Calculation Memorandum for Yinfeng Imp & Exp Trading Co., Ltd/Fujian Province Youxi City Mangrove Wood Machining Co., Ltd.,'' dated concurrently with this notice.

[5] *See Preliminary Results,* 88 FR at 14140.

[6] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (*Assessment Practice Refinement*).

Partial Rescission

In the *Preliminary Results,* Commerce determined that China Cornici Co. Ltd. (China Cornici) had no suspended entries of subject merchandise during the POR. After analysis of comments received from interested parties and the record information, we continue to determine that China Cornici had no reviewable entries of subject merchandise during the POR.[7] Therefore, we are rescinding this review with respect to China Cornici in accordance with 19 CFR 351.213(d)(3).

In the *Preliminary Results,* Commerce determined that TL Wood Products Inc. (TL Wood) and Aventra, Inc. (Aventra) were not eligible for review pursuant to 19 CFR 351.213(b)(1), because record evidence indicates that they are U.S. resellers. After analysis of the comments received from interested parties and the record information, we continue to determine that TL Wood and Aventra are U.S. resellers and not eligible for review pursuant to 19 CFR 351.213(b)(1).[8] Therefore, we are rescinding this review with respect to TL Wood and Aventra in accordance with 19 CFR 351.213(d)(3).

Separate Rate Respondents

In our *Preliminary Results,* we determined that 29 companies demonstrated their eligibility for separate rates.[9] We received arguments from interested parties since the issuance of the *Preliminary Results.* After an analysis of these comments, we continue to find that each of these 29 companies [10] is eligible for a separate rate, as indicated in the table in the ''Final Results of Review'' section of this notice.[11]

Rate for Non-Examined Separate Rate Respondents

The statute and our regulations do not address the establishment of a rate to be assigned to respondents not selected for individual examination when we limit our examination of companies subject to the administrative review pursuant to section 777A(c)(2)(B) of the Tariff Act of 1930, as amended (the Act). Generally, we look 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 respondents not individually examined 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 and *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' Accordingly, Commerce's usual practice in determining the rate for separate-rate respondents not selected for individual examination, has been to average the weighted-average dumping margins of the selected companies, excluding rates that are zero, *de minimis,* or based entirely on facts available.[12] However, when the weighted-average dumping margins established for all individually investigated respondents are zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act permits Commerce to ''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.'' [13] Because in these final results of this review we calculated a dumping margin of zero for both Yinfeng/Mangrove and Jinquan/Baiyuan, we assigned a zero dumping margin to the separate rate respondents that we did not individually examine consistent with Commerce's practice and section 735(c)(5)(B) of the Act.[14]

The China-Wide Entity

In the *Preliminary Results,* Commerce found that Gaomi Hongtai did not establish eligibility for a separate rate because it did not file a timely separate rate application or a separate rate certification, as appropriate.[15] After analyzing the comments received from interested parties and record information, we continue to determine that Gaomi Hongtai did not establish its eligibility for a separate rate.[16] Therefore, for these final results, we determine Gaomi Hongtai to be part of the China-wide entity. Because no party requested a review of the China-wide entity, and Commerce no longer considers the China-wide entity as an exporter conditionally subject to administrative reviews,[17] we did not conduct a review of the China-wide entity. Thus, the weighted-average dumping margin for the China-wide entity, as adjusted for export subsidies (*i.e.,* 220.87 percent),[18] is not subject to change as a result of this review.

Final Results of Review

For companies subject to this review which established their eligibility for a separate rate, Commerce determines that the following weighted-average dumping margins exist for the period August 12, 2020, through January 31, 2022:

Exporters	Weighted-average dumping margin (percent)
Fujian Jinquan Trade Co., Ltd./Baiyuan Wood Machining Co., Ltd	0.00
Yinfeng Imp & Exp Trading Co., Ltd./Fujian Province Youxi City Mangrove Wood Machining Co., Ltd	0.00
Non-Selected Companies Under Review Receiving a Separate Rate [19]	0.00

[7] *See* Issues and Decision Memorandum at Comment 15 for further discussion.

[8] *Id.* at Comment 16 for further discussion.

[9] *See Preliminary Results* PDM at 10–13.

[10] *See* Appendix II for a list of these companies.

[11] *See* Issues and Decision Memorandum at Comments 12 through 19 for further discussion.

[12] *See Longkou Haimeng Mach. Co.* v. *United States,* 581 F. Supp. 2d 1344, 1357–60 (CIT 2008) (affirming Commerce's determination to assign a 4.22 percent dumping margin to the separate-rate respondents in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and zero percent, respectively); *see also Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 36656, 36660 (July 24, 2009).

[13] *See Albemarle Corp.* v. *United States,* 821 F.3d 1345 (Fed. Cir. 2016).

[14] *See Preliminary Results* PDM at 14; and section 735(c)(5)(B) of the Act.

[15] *See Preliminary Results* PDM at 13–14.

[16] *See* Issues and Decision Memorandum at Comment 14 for further discussion.

[17] *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, 65969–70 (November 4, 2013).

[18] *See Order,* 86 FR at 9488. The weighted-average dumping margin for the China-wide entity (231.60 percent) was adjusted for export subsidies to determine the cash deposit rate (220.87 percent) for companies in the China-wide entity.

[19] *See* Appendix II.

Disclosure

We intend to disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce has determined, and U.S Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these final results of review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these final results. 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 Yinfeng/Mangrove, Jinquan/Baiyuan and the other respondents which were not selected for individual examination and which qualified for a separate rate, we 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 databases submitted by Yinfeng/Mangrove and Jinquan/Baiyuan during this review, Commerce will instruct CBP to liquidate such entries at the China-wide rate (*i.e.,* 220.87 percent).

For the company identified as part of the China-wide entity, Gaomi Hontai, we will instruct CBP to apply the China-wide rate (*i.e.,* 220.87 percent) to all entries of subject merchandise during the POR which were exported by this company.

For Shunchang Shengsheng, Xiamen Jinxi, and Green Wood, which Commerce determined had no shipments of the subject merchandise during the POR, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's cash deposit rate) will be liquidated at the rate for the China-wide entity, consistent with Commerce's assessment practice in non-market economy cases.[21] For China Cornici, TL Wood, and Aventra, for which the administrative review is rescinded, antidumping duties shall be assessed at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

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 from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for Jinquan/Baiyuan, Yinfeng/Mangrove, and the other companies which were found eligible for a separate rate, the cash deposit rate will be zero; (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding in which they were reviewed; (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 equal to the weighted-average dumping margin for the China-wide entity (*i.e.,* 220.87 percent); and (4) for all non-Chinese exporters of subject merchandise which have not received their own separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter(s) that supplied that non-Chinese exporter. These per-unit cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing 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 and/or countervailing duties has 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.

Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results of administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: September 5, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Issues and Decision Memorandum

[20] *See* 19 CFR 351.106(c)(2).

[21] For a full discussion of this practice, *see Assessment Practice Refinement,* 76 FR at 65694.

Appendix II—Non-Selected Companies Under Review Receiving a Separate Rate

1. Anji Huaxin Bamboo & Wood Products Co., Ltd.
2. Baixing Import and Export Trading Co., Ltd Youxi Fujian
3. Bel Trade Wood Industrial Co., Ltd Youxi Fujian
4. Fotiou Frames Limited
5. Fujian Hongjia Craft Products Co., Ltd.
6. Fujian Sanming City Donglai Wood Co., Ltd
7. Fujian Wangbin Decorative Material Co., Ltd
8. Fujian Youxi Best Arts & Crafts Co. Ltd
9. Fujian Zhangping Kimura Forestry Products Co., Ltd.
10. Homebuild Industries Co., Ltd.
11. Jiangsu Chen Sheng Forestry Development Co., Ltd.
12. Jiangsu Wenfeng Wood Co., Ltd.
13. Jim Fine Wooden Products Co., Ltd.
14. Longquan Jiefeng Trade Co., Ltd.
15. Nanping Huatai Wood & Bamboo Co., Ltd
16. Omni One, Co., Limited
17. Putian Yihong Wood Industry Co., Ltd.
18. Raoping HongRong Handicrafts, Co., Ltd.
19. Shandong Miting Household Co., Ltd.
20. Shaxian Hengtong Wood Industry Co., Ltd
21. Shaxian Shiyiwood, Ltd
22. Shenzhen Xinjintai Industrial Co., Ltd.
23. Shuyang Kevin International Co., Ltd
24. Sun Valley Shade Co., Ltd.
25. Suqian Sulu Import & Export Trading Co., Ltd
26. Tim Feng Manufacturing Co., Ltd.
27. Wuxi Boda Bamboo & Wood Industrial Co., Ltd.
28. Zhangzhou Wangjiamei Industry & Trade Co., Ltd.
29. Zhangzhou Yihong Industrial Co., Ltd.

[FR Doc. 2023–19629 Filed 9–11–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–150]

Tin Mill Products From the People's Republic of China: Postponement of Final Determination in the Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is postponing the deadline for issuing the final determination in the less-than-fair-value (LTFV) investigation of tin mill products from the People's Republic of China (China) until January 4, 2024, and is extending the provisional measures from a four-month period to a six-month period.

DATES: Applicable September 12, 2023.

FOR FURTHER INFORMATION CONTACT: Samuel Frost, AD/CVD Operations V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8180.

SUPPLEMENTARY INFORMATION:

Background

On February 14, 2023, Commerce initiated an LTFV investigation of imports of tin mill products from China.[1] The period of investigation is July 1, 2022, through December 31, 2022. On August 22, 2023, Commerce published the *Preliminary Determination,* in which Commerce preliminarily determined that tin mill products from China are being, or are likely to be, sold in the United States at LTFV.[2]

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(b)(2) provide 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 or producers 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.[3] Further, 19 CFR 351.210(e)(2) requires that such postponement requests by exporters be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months, in accordance with section 733(d) of the Act.

On August 31, 2023, Shougang Jingtang United Iron & Steel Co., Ltd. (Shougang Jingtang), an exporter and producer accounting for a significant proportion of exports of subject merchandise, requested that Commerce postpone the deadline for final determination and extend the application of the provisional measures from a four-month period to a period of not more than six months.[4] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination was affirmative; (2) the request for postponement was made by an exporter/producer who 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 until no later than 135 days after the date of publication of the *Preliminary Determination,* and extending the provisional measures from a four-month period to a period of not more than six months. Accordingly, Commerce will issue its final determination no later than January 4, 2024.[5]

Notification to Interested Parties

This notice is issued and published pursuant to section 735(a)(2) of the Act and 19 CFR 351.210(g).

Dated: September 6, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–19682 Filed 9–11–23; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Tin Mill Products from Canada, the People's Republic of China, Germany, the Netherlands, the Republic of Korea, Taiwan, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 9481 (February 14, 2023) (*Initiation Notice*).

[2] *See Tin Mill Products from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances,* 88 FR 57099 (August 22, 2023) (*Preliminary Determination*).

[3] The petitioners are Cleveland-Cliffs, Inc. and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

[4] *See* Shougang Jingtang's Letter, ''Request to Extend Final Results,'' dated August 31, 2023.

[5] Because Commerce previously aligned the deadline for the final determination of the companion countervailing duty (CVD) investigation of tin mill products from China with the deadline for this investigation, the deadline for issuing the final determination in the CVD investigation is also January 4, 2024. *See Tin Mill Products from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination,* 88 FR 41373 (June 26, 2023).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–804]

Certain Steel Nails From the United Arab Emirates: Continuation of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) order on certain steel nails (steel nails) from the United Arab Emirates (UAE) would likely lead to continuation or recurrence of dumping and material injury to an industry in the United

States, Commerce is publishing a notice of continuation of the AD order.

DATES: Applicable August 31, 2023.

FOR FURTHER INFORMATION CONTACT: Kelsie Hohenberger, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2517.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 2012, Commerce published in the **Federal Register** the AD order on steel nails from the UAE.[1] On September 1, 2022, the ITC instituted,[2] and Commerce initiated the second sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[3] As a result of its review, Commerce determined that revocation of the *Order* would likely lead to continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins of dumping likely to prevail should the *Order* be revoked.[4]

On August 31, 2023, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Order* would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Order

The merchandise covered by the *Order* includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot-dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to the *Order* are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Certain steel nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire.

Certain steel nails subject to the *Order* are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55, 7317.00.65, and 7317.00.75.

Excluded from the scope of the *Order* are steel nails specifically enumerated and identified in ASTM Standard F 1667 (2011 revision) as Type I, Style 20 nails, whether collated or in bulk, and whether or not galvanized.

Also excluded from the scope of the *Order* are the following products:

- non-collated (*i.e.,* hand-drive or bulk), two-piece steel nails having plastic or steel washers (caps) already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500″ to 8″, inclusive; an actual shank diameter of 0.1015″ to 0.166″, inclusive; and an actual washer or cap diameter of 0.900″ to 1.10″, inclusive;
- non-collated (*i.e.,* hand-drive or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500″ to 4″, inclusive; an actual shank diameter of 0.1015″ to 0.166″, inclusive; and an actual head diameter of 0.3375″ to 0.500″, inclusive;
- wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500″ to 1.75″, inclusive; an actual shank diameter of 0.116″ to 0.166″, inclusive; and an actual head diameter of 0.3375″ to 0.500″, inclusive;
- non-collated (*i.e.,* hand-drive or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75″ to 3″, inclusive; an actual shank diameter of 0.131″ to 0.152″, inclusive; and an actual head diameter of 0.450″ to 0.813″, inclusive;
- corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side;
- thumb tacks, which are currently classified under HTSUS 7317.00.10.00;
- fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30;
- certain steel nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive; and
- fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Order* is dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Order.* U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Order* will be August 31, 2023.[6] Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year review of the *Order* not later than 30 days prior to the fifth anniversary of the date of the last determination by the ITC.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return, destruction, or conversion to judicial protection order 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 is a violation of the APO which may be subject to sanctions.

[1] *See Certain Steel Nails from the United Arab Emirates: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 77 FR 27421 (May 10, 2012) (*Order*).

[2] *See Steel Nails from the United Arab Emirates; Institution of a Five-Year Review,* 87 FR 53777 (September 1, 2022).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 53727 (September 1, 2022).

[4] *See Certain Steel Nails from the United Arab Emirates: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order,* 87 FR 80158 (December 29, 2022).

[5] *See Steel Nails from the United Arab Emirates,* 88 FR 60240 (August 31, 2023) (*ITC Final Determination*).

[6] *See ITC Final Determination.*

Notification to Interested Parties

This five-year sunset review and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: September 6, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–19628 Filed 9–11–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–837]

Carbon and Alloy Steel Wire Rod From Italy: Continuation of Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the countervailing duty (CVD) order on carbon and alloy steel wire rod (wire rod) from Italy would likely lead to the continuation or recurrence of countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of this CVD order.

DATES: Applicable August 2, 2023.

FOR FURTHER INFORMATION CONTACT: Scarlet K. Jaldin or James R. Hepburn, 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) 482–4275, or (202) 482–1882, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 2018, Commerce published in the **Federal Register** the CVD order on wire rod from Italy.[1] On December 1, 2022, the ITC instituted,[2] and Commerce initiated,[3] the first sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its review, Commerce determined that revocation of the *Order* would likely lead to the continuation or recurrence of countervailable subsidies, and therefore, notified the ITC of the magnitude of the margins of subsidy rates likely to prevail should the *Order* be revoked.[4]

On August 2, 2023, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Order* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Order

The scope of the *Order* covers certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high-nickel steel; (d) ball bearing steel; or (e) concrete reinforcing bars and rods. Also excluded are free cutting steel (also known as free machining steel) products (*i.e.,* products that contain by weight one or more of the following elements: 0.1 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorous, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under the *Order* are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3093; 7213.91.4500, 7213.91.6000, 7213.99.0030, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035 of the HTSUS. Products entered under subheadings 7213.99.0090 and 7227.90.6090 of the HTSUS also may be included in this scope if they meet the physical description of subject merchandise above. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Order* is dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to continuation or recurrence of countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Order.* U.S. Customs and Border Protection will continue to collect CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Order* will be August 2, 2023. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year reviews of the *Order* not later than 30 days prior to fifth anniversary of the date of the last determination by the Commission.[6]

Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This five-year sunset review and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: September 6, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–19683 Filed 9–11–23; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Carbon and Alloy Steel Wire Rod from Italy and the Republic of Turkey: Amended Final Affirmative Countervailing Duty Determination for the Republic of Turkey and Countervailing Duty Orders for Italy and the Republic of Turkey,* 83 FR 23420 (May 21, 2018) (*Order*).

[2] *See Carbon and Certain Alloy Steel Wire Rod from Belarus, Italy, Russia, South Africa, South Korea, Spain, Turkey, Ukraine, the United Arab Emirates, and the United Kingdom; Institution of Five-Year Reviews,* 87 FR 73789 (December 1, 2022).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 73757 (December 1, 2022).

[4] *See Carbon and Alloy Steel Wire Rod from Italy: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 88 FR 18296 (March 28, 2023), and accompanying Issues and Decision Memorandum.

[5] *See Carbon and Certain Alloy Steel Wire Rod from Belarus, Italy, Russia, South Africa, South Korea, Spain, Turkey, Ukraine, the United Arab Emirates, and the United Kingdom,* 88 FR 50911 (August 2, 2023) (*ITC Final Determination*).

[6] *See ITC Final Determination.*

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Additive Construction by Extrusion (ACE) Consortium

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of research consortium.

SUMMARY: The National Institute of Standards and Technology (NIST), an agency of the United States Department of Commerce, in support of efforts to establish the measurement science required for development of the standards and industry for Additive Construction by Extrusion (ACE), is establishing the Additive Construction by Extrusion (ACE) Consortium (''Consortium''). The Consortium will bring together stakeholders to identify and address gaps in current standards related to materials, methods, structural performance, and engineering design. The Consortium efforts are intended to study the measurement science needs for the successful adoption of ACE by the construction industry, and to identify and propose new standards to address industry needs not met by existing standards. Participation fees will be at least $10,000 annually or in-kind contributions of equivalent value. Participants will be required to sign a Cooperative Research and Development Agreement (CRADA). At NIST's discretion, entities which are not permitted to enter into CRADAs pursuant to law or other governmental constraint may be allowed to participate in the Consortium pursuant to a separate non-CRADA agreement.

DATES: The Consortium's activities will commence on October 15, 2023 (''Commencement Date''). NIST will accept letters of interest to participate in this Consortium on an ongoing basis.

ADDRESSES: Completed letters of interest or requests for additional information about the Consortium can be directed via mail to the Consortium Manager, Dr. Shawn Platt, Materials and Structural Systems Division of NIST's Engineering Laboratory, 100 Bureau Drive, Mail Stop 8615, Gaithersburg, Maryland 20899, or via electronic mail to *shawn.platt@nist.gov.*

FOR FURTHER INFORMATION CONTACT: J'aime Maynard, Consortia Agreements Officer, National Institute of Standards and Technology's Technology Partnerships Office, by telephone at (301) 975–8408, by mail to 100 Bureau Drive, Mail Stop 2200, Gaithersburg, Maryland 20899, or by electronic mail to *Jaime.maynard@nist.gov.*

SUPPLEMENTARY INFORMATION: Additive construction by extrusion (ACE) technology has the potential to revolutionize the construction industry by eliminating the need for formwork and enabling architectural and structural designs that cannot be achieved through current standard practices. As ACE remains in the early stages of development, this Consortium will study the measurement science needs for the successful adoption of ACE by the construction industry. The objective of this Consortium is to identify and then translate cementitious material measurements to in-line or in-process measurements for quality control and quality assurance in the ACE process. Participants in the Consortium will work with NIST toward the following goals:

(1) Correlating Off-Line Measurements to Print Quality

A focus will be on correlating off-line measurements of fresh and hardening ink to a measure of print quality. The objectives are to determine material performance characteristics that are critical to the success of ACE.

(2) In-Situ and In-Process Measurements

A focus will be on developing in-situ and in-process measurements that may be used to provide feedback into the control of the ACE process. The objective is to implement material property measurements in line to the ACE process.

(3) Hardened Properties and Scaling up From Paste to Concrete

A focus will be on measurements at the structural scale, including a proper consideration of in-field issues. This includes, but is not limited to, hardened property measurements; studies on curing practices and finishing procedures; and development of numerical simulations of material deposition. The objectives are to develop measurement techniques to assess hardened properties of 3–D printed structures and investigate how early age properties and measurements may inform ACE through the use of numerical simulations.

Participation Process

NIST is soliciting responses from all sources, including other Federal Government agencies, State or local governments, foreign government agencies, industrial organizations (including corporations, partnerships, and limited partnerships, and industrial development organizations), public and private foundations, and nonprofit organizations (including universities). Eligibility will be determined by NIST based on the information provided by prospective participants in response to this notice. NIST will evaluate the submitted responses from prospective participants to determine eligibility to participate in this Consortium. Prospective participants should provide letters of interest with the following information to NIST's Consortium Manager:

1. Narrative of interest in ACE and description of related experience and expertise to contribute to the Consortium.
2. List of anticipated participating individuals.
3. If proposing in-kind participation instead of a fee contribution, description of anticipated in-kind donation and its equivalent value to fee.

Letters of interest must not include business proprietary information. NIST will not treat any information provided in response to this notice as proprietary information. NIST will notify each organization of its eligibility. In order to participate in this Consortium, each eligible organization must sign a CRADA for this Consortium. Entities which are not permitted to enter into CRADAs pursuant to law or other governmental constraint may be allowed to participate in the Consortium, at NIST's discretion, pursuant to separate non-CRADA agreements with terms that may differ, as necessary, from the Consortium CRADA terms.

Participants will contribute US $10,000 annually in funds or equivalent in-kind contributions to be members of the Consortium. NIST does not guarantee participation in the Consortium to any organization submitting a letter of interest. This phase of the Consortium will be for up to five years.

Authority: 15 U.S.C. 3710a.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023–19647 Filed 9–11–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

CHIPS R&D Standards Summit

AGENCY: CHIPS Research and Development Office (CHIPS R&D Office), National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the CHIPS Research and Development Office (CHIPS R&D Office) will hold a Standards Summit on Tuesday, September 26, 2023 and Wednesday, September 27, 2023, from 8:30 a.m. to 5:30 p.m. Eastern Time each day. The CHIPS R&D Standards Summit will be held as an in-person and virtual event. This event will bring together CHIPS R&D leaders, standards setting organizations, and industry alliances, domestic and abroad, in the semiconductor domain to identify community priorities for semiconductor and microelectronics standards activities. The summit will be a place to foster collaboration, coordination, and innovation within the semiconductor industry's standards community. This event will facilitate discussions on standards needs, opportunities for standards innovation, and enabling a diverse standards-capable workforce. Registration information, summit updates, and the agenda can be found at *https://www.nist.gov/news-events/events/2023/09/chips-rd-standards-summit.*

DATES: The CHIPS R&D Standards Summit will take place on Tuesday, September 26, 2023, and Wednesday, 27, 2023, from 8:30 a.m. to 5:30 p.m. Eastern Time each day. The summit will require prior registration and is open to the public. Registration for both virtual and in-person will close on Tuesday, September 19, 2023 at 11:59 p.m. Eastern Time.

ADDRESSES: The CHIPS R&D Standards Summit will be held in person and virtually via web conference from the Capitol Hilton located at 1001 16th St. NW, Washington, DC 20036. Registration is required to participate either in person or virtually, and members of the public should register in accordance with the information provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For more information about the CHIPS R&D Standards Summit, please contact Chris Greer by telephone at (301) 975–5919 or by email at *christopher.greer@nist.gov.*

SUPPLEMENTARY INFORMATION: The CHIPS R&D Standards Summit will bring together thought leaders within the semiconductor industry and academia to shape the future of semiconductor and microelectronics standards and drive innovation. The summit will offer sessions that facilitate consensus building on the top priority areas within the industry, ways to accelerate strategic efforts across these priority areas, and cover concepts from incubators and accelerators as practiced in the technology sector that might be adapted for use in standards development and enabling a diverse, standards-capable workforce. The summit's first day will consist of plenary and panel sessions with exemplary keynote and guest speakers in the semiconductor and microelectronics standards space. The following day will consist of breakout sessions where attendees will collaborate and discuss key topics that will help shape future semiconductor and microelectronics standards activities.

Participants will explore ways to improve the agility and efficiency of the standards process, ensuring its continued growth in the rapidly evolving semiconductor industry. The scope of the summit includes the full range of standards types—including best practices, de facto, and formal standards—while spanning the semiconductor and microelectronics sector, from materials and design to fabrication, packaging, and testing and certification. Featured speakers include CHIPS R&D leaders, representatives of standards setting organizations, and leading industry alliances and consortia.

Co-hosted by the CHIPS R&D Office, the American National Standards Institute (ANSI), the IEEE Industry Standards and Technology Organization (IEEE–ISTO), the International Electronics Manufacturing Initiative (iNEMI), IPC International, the Joint Development Foundation (JDF), the Networking and Information Technology Research and Development Program (NITRD), the National Nanotechnology Coordination Office (NNCO), SEMI North America, and the Semiconductor Industry Association (SIA), the summit will bring together key stakeholders and experts to exchange ideas on focusing and accelerating strategic efforts across the full spectrum of standards development pathways.

The outcomes of the CHIPS R&D Standards Summit will shape future stakeholder meetings and inform strategies for the CHIPS R&D Office. They will also provide input to standards and measurement programs supporting the needs of the semiconductor industry, enhancing innovation and technology advancement. These outcomes will be published in a post-summit report and will inform standards planning efforts across the semiconductor innovation ecosystem and within the CHIPS R&D Office.

We encourage interested stakeholders, industry representatives, and standards setting organizations to participate actively in this pivotal event. We also invite international attendees, as fostering global collaboration and enriching the discussions on advancing semiconductor standards and innovation is paramount to success. Join us at the CHIPS R&D Standards Summit as we collaboratively shape the future of semiconductor and microelectronics standards, foster innovation, and advance the industry as a whole.

Registration Information: The CHIPS R&D Standards Summit is available for guests to attend in person in Washington, DC, or virtually via a web conference platform. Registration for all attendees is on a first-come, first-served basis. An in-person registration fee of $41 includes all-day coffee, tea and bottled beverages. There is no registration fee to attend virtually. Once the event has reached capacity for registration, additional registrants will be added to a waitlist. All attendees will participate in the keynote, plenary, and breakout sessions. In-person guests will participate in live discussions during the various sessions. Virtual guests can contribute to discussions via Q&A and conversation tools on the web conference platform. On the summit registration form, attendees must select whether to attend in person or virtually. Attendees must also provide their full name, contact information, company name and title, and any accessibility accommodation requests. Registration for in-person and virtual attendance options will close on Tuesday, September 19, 2023 at 11:59 p.m. Eastern Time. For more information and to register for the event, visit the CHIPS R&D Standards Summit website at *https://www.nist.gov/news-events/events/2023/09/chips-rd-standards-summit.*

About CHIPS for America

CHIPS for America includes the CHIPS Program Office, responsible for semiconductor incentives, and the CHIPS Research and Development Office, responsible for R&D programs. Both sit within the National Institute of Standards and Technology (NIST) at the Department of Commerce.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023–19645 Filed 9–11–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Artificial Intelligence Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open briefing session.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the National Artificial Intelligence Advisory Committee (NAIAC or Committee) will hold a virtual briefing session. This session will be held on Friday, September 29, 2023 from 12:00 p.m. to 1:00 p.m. Eastern Time. The purpose of this session is for invited experts to brief the Committee on topics of interest related to the Committee's year two efforts. Additional information, including the final agenda and link to register, will be available online at: *ai.gov/naiac/.*

DATES: The session will be held on Friday, September 29, 2023 from 12:00 p.m. to 1:00 p.m. Eastern Time. Additional information will be available on *ai.gov/naiac/.* Members of the public interested in viewing the session are encouraged to visit *ai.gov/naiac/* for session details and to register to watch virtually. Registration is required to view the virtual session and members of the public should register in accordance with the information provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: This session will be held virtually. For instructions on how to attend the session, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Alicia Chambers, Designated Federal Officer, National Institute of Standards and Technology, 100 Bureau Drive, MS 1000, Gaithersburg, MD 20899, *alicia.chambers@nist.gov* or 240–374–0089. Please direct any inquiries to *naiac@nist.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act, 5 U.S.C. 1001 *et seq.,* notice is hereby given that the NAIAC will hold a briefing session on Friday, September 29, 2023 from 12:00 p.m. to 1:00 p.m. Eastern Time. The session will be open to the public and will be held virtually. Interested members of the public will be able to attend the session from remote locations. The purpose of this session is for invited experts to brief the Committee on topics of interest related to the Committee's year two efforts. Additional information, including the final agenda and link to register, will be available online at: *ai.gov/naiac/.*

The NAIAC is authorized by section 5104 of the National Artificial Intelligence Initiative Act of 2020 (Pub. L. 116–283), in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. 1001 *et seq.* The Committee advises the President and the National Artificial Intelligence Initiative Office on matters related to the National Artificial Intelligence Initiative. Additional information on the NAIAC is available at *ai.gov/naiac/.*

Comments: Oral comments from the public will not be permitted during this virtual session. However, individuals and representatives of organizations may submit written comments and suggestions to the Committee at any time. Please note that all submitted comments will be treated as public documents and will be made available for public inspection. All comments must be submitted via email with the subject line ''YOUR NAME, YOUR ORGANIZATION NAME (if applicable), NAIAC Comments'' to *naiac@nist.gov.*

Virtual Admittance Instructions: The session will be broadcast live via virtual teleconference. Registration is required to view the virtual session. To register, please visit *ai.gov/naiac/.* Members of the public that would like to view the virtual session must register by 5:00 p.m. Eastern Time, Thursday September 28, 2023.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023–19640 Filed 9–11–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Open Meeting of the Internet of Things Advisory Board

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Internet of Things (IoT) Advisory Board will meet Tuesday, October 24 and Wednesday October 25, 2023 from 11 a.m. until 5 p.m., Eastern Time. Both sessions will be open to the public.

DATES: The Internet of Things (IoT) Advisory Board will meet Tuesday, October 24 and Wednesday October 25, 2023 from 11 a.m. until 5 p.m., Eastern Time.

ADDRESSES: The meeting will be virtual via Webex webcast hosted by the National Cybersecurity Center of Excellence (NCCoE) at NIST. Please note registration instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Barbara Cuthill, Information Technology Laboratory, National Institute of Standards and Technology, Telephone: (301) 975–3273, Email address: *barbara.cuthill@nist.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the IoT Advisory Board will hold open meetings on Tuesday, October 24 and Wednesday October 25, 2023 from 11 a.m. until 5 p.m., Eastern Time. Both sessions will be open to the public. The IoT Advisory Board is authorized by section 9204(b)(5) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283) and advises the IoT Federal Working Group convened by the Secretary of Commerce pursuant to section 9204(b)(1) of the Act on matters related to the Federal Working Group's activities. Details regarding the IoT Advisory Board's activities are available at *https://www.nist.gov/itl/applied-cybersecurity/nist-cybersecurity-iot-program/internet-things-advisory-board.*

The agenda for the October meeting is expected to focus on establishing consensus on the recommendations to be included in the IoT Advisory Board's report for the IoT Federal Working Group as well as continued refinement of that report.

The recommendations and discussions are expected to focus on the specific focus areas for the report cited in the legislation and the charter:

- Smart traffic and transit technologies
- Augmented logistics and supply chains
- Sustainable infrastructure
- Precision agriculture
- Environmental monitoring
- Public safety
- Health care

In addition, the IoT Advisory Board may discuss other elements that the legislation called for in the report:

- Whether adequate spectrum is available to support the growing Internet of Things and what legal or regulatory barriers may exist to providing any spectrum needed in the future;
- Policies, programs, or multi-stakeholder activities that—
  - Promote or are related to the privacy of individuals who use or are affected by the Internet of Things;

○ May enhance the security of the Internet of Things, including the security of critical infrastructure;

○ May protect users of the Internet of Things; and

○ May encourage coordination among Federal agencies with jurisdiction over the Internet of Things

Note that agenda items may change without notice. The final agendas will be posted on the IoT Advisory Board web page: *https://www.nist.gov/itl/applied-cybersecurity/nist-cybersecurity-iot-program/internet-things-advisory-board.*

Public Participation: Written comments and requests to present comments orally to the IoT Advisory Board from the public are invited and may be submitted electronically by email to Barbara Cuthill at the contact information indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice by 5 p.m. on the Tuesday, October 14, 2023 to allow distribution of written comments to IoT Advisory Board members prior to the meeting.

Each IoT Advisory Board meeting agenda will include a period, not to exceed sixty minutes, for oral presentation of comments from the public. Oral presentation of comments from the public during this sixty-minute period will be accommodated on a first-come, first-served basis and limited to five minutes per person for oral presentation if requested by the commenter.

Members of the public who wish to expand upon their submitted comments, those who had wished to present comments orally but could not be accommodated on the agenda, and those who were unable to attend the meeting via webinar, are invited to submit written statements. In addition, written statements are invited and may be submitted to the IoT Advisory Board at any time. All written statements should be directed to the IoT Advisory Board Secretariat, Information Technology Laboratory by email to: *Barbara.Cuthill@nist.gov.*

Admittance Instructions: Participants planning to attend via webinar must register via the instructions found on the IoT Advisory Board's web page at *https://www.nist.gov/itl/applied-cybersecurity/nist-cybersecurity-iot-program/internet-things-advisory-board.*

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023–19639 Filed 9–11–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

2023 Fall Meetings of the Regional Weights and Measures Associations

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The fall 2023 meetings of the regional weights and measures associations will be held in September and October 2023. The Central Weights and Measures Association (CWMA) Interim meeting will be held September 11–14, 2023, in Dubuque, Iowa; the Western Weights and Measures Association (WWMA) Annual meeting will be held September 17–21, 2023, in Sparks, Nevada; the Southern Weights and Measures Association (SWMA) Annual meeting will be held October 8–11, 2023 in Annapolis, Maryland; and the Northeastern Weights and Measures Association (NEWMA) Interim meeting will be held October 16–19, 2023, in Norwich, Connecticut. This notice contains information about significant items on the committee agendas of the four regional weights and measures associations but does not include all agenda items. As a result, the items are not consecutively numbered.

DATES: The CWMA Interim meeting will be held September 11–14, 2023, and the meeting schedule will be available on the CWMA website at *https://www.cwma.net/events.* The WWMA Annual meeting will be held September 17–21, 2023, and the meeting schedule will be available on the WWMA website at *https://westernwma.org/events.* The SWMA Annual meeting will be held October 8–11, 2023, and the meeting schedule will be available on the SWMA website at *https://www.swma.org/events.* The NEWMA Interim meeting will be held October 16–19, 2023, and the meeting schedule will be available on the NEWMA website at *https://newma.us/page-1075185.*

ADDRESSES: The CWMA Interim meeting will be held in Dubuque, Iowa, with registration and other meeting details available on the CWMA website at *https://www.cwma.net/events.* The WWMA Annual meeting will be held in Sparks, Nevada, with registration and other meeting details available on the WWMA website at *https://westernwma.org/events.* The SWMA Annual meeting will be held in Annapolis, Maryland, with registration and other meeting details on the SWMA website at *https://www.swma.org/events.* The NEWMA Interim meeting will be held in Norwich, Connecticut, with registration and other meeting details available on the NEWMA website at *https://newma.us/page-1075185.*

FOR FURTHER INFORMATION CONTACT: Dr. Katrice Lippa, NIST, Office of Weights and Measures, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600. You may also contact Dr. Lippa at (301) 975–3116 or by email at *katrice.lippa@nist.gov.* The meetings are open to the public, but the payment of a registration fee is required. Please see the individual websites of the regional weights and measures associations to view the meeting agendas, registration forms, and hotel reservation information.

Background Information: Publication of this notice on behalf of the regional weights and measures associations is undertaken as a public service and does not itself constitute an endorsement by the National Institute of Standards and Technology (NIST) of the content of the notice. NIST participates in the regional weights and measures associations pursuant to 15 U.S.C. 272(b)(10) and (c)(4) and in accordance with Federal policy (*e.g.,* OMB Circular A–119 ''Federal Participation in the Development and Use of Voluntary Consensus Standards'').

The regional weights and measures associations are organizations of weights and measures officials of the states, counties, and cities representing four regions (Central, Western, Southern, and Northeast) of the United States, and include representatives from the private sector and federal agencies. These meetings bring together government officials and representatives of business, industry, trade associations, and consumer organizations on subjects related to the field of weights and measures technology, administration, and enforcement. The regional weights and measures associations operate Standing Committees to conduct open hearings on new items and for all carryover items from the preceding 2023 Annual Meeting of the National Conference on Weights and Measures (NCWM). The regional meetings provide a forum for the further development of regional consensus for these items and serve as the gateway for moving any new items onto the national agenda of the NCWM.

NIST also participates in the regional weights and measures associations providing technical insight and to encourage cooperation between the private sector, federal agencies, and the states in the development of legal metrology requirements. NIST also

promotes uniformity in state laws, regulations, and testing procedures used in the regulatory control of commercial weighing and measuring devices, packaged goods, and for other trade and commerce issues.

Comments will be taken by the respective standing committees in each region on agenda items during the open hearing portion of the regional weights and measures association meetings. The committees then deliberate on these comments which are used to develop recommendations to be forwarded to the national-level standing committees of the NCWM. The sessions are open to registered attendees of the regional weights and measures association meetings and can include both association members and non-members that represent a range of stakeholder groups. These recommendations are intended to amend NIST Handbook 44, ''Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices'' (NIST HB 44), NIST Handbook 130, ''Uniform Laws and Regulations in the areas of Legal Metrology and Fuel Quality'' (NIST HB 130), and NIST Handbook 133 Checking the Net Contents of Packaged Goods (NIST HB 133). These NIST Handbooks are regularly adopted by states either by reference or through their administrative procedures.

The following are brief descriptions of some of the significant agenda items that will receive further consideration by the Standing Committees at the upcoming regional weights and measures associations meetings. Comments will be taken on these and other issues during several public comment sessions. At this stage, the items are proposals.

These notices are intended to make interested parties aware of these development projects and to make them aware that reports on the status of the project will be given at the January 2024 NCWM Interim Meeting. The notices are also presented to invite the participation of manufacturers, experts, consumers, users, and others who may be interested in these efforts.

Detailed Information: The Specifications and Tolerances (S&T) Committee of each of the regional weights and measures associations will consider proposed amendments to NIST HB 44. Those items address weighing and measuring devices used in commercial or law enforcement applications or for the collection of statistical information by government agencies. The following items are proposals to amend NIST HB 44:

WIM—Weigh-In-Motion Systems

WIM–23.1. Remove Tentative Status and Amend Numerous Sections Throughout. The S&T Committees will consider a proposal to convert the current *Tentative* Code of Section 2.25 Weigh-In-Motion Systems Used for Vehicle Enforcement Screening to *Permanent* status and to expand the code to include ''and Enforcement''. This also includes (but is not limited to): (1) the addition of an Accuracy Class ''E'' WIM scale (in addition to Class A (classification applies to vehicles that will undergo screening)) in the specifications (S); (2) the addition of test procedures to address the new Accuracy Class E (classification applies to vehicles that undergo enforcement activity) in the test procedures (N) section for the determination of test speeds, dynamic test loads, and vehicle positions; (3) the designation of more stringent tolerances (T) for Accuracy Class E as compared to those for Accuracy Class A and a designation noting Accuracy Class E tolerances are to be applied to WIM scales used for enforcement purposes; and (4) the addition of a Class E weighing application in the user requirements (UR) for the explicit enforcement of vehicles based on axle, axle group, and gross vehicle weights. Assessments during the 2022 regional weights and measures association meetings recommended a Developing status to allow the submitters to address questions raised regarding the application of tolerances and test procedures and allow input regarding the use of the code for enforcement purposes (rather than screening) from those jurisdictions impacted by the proposed change in scope and status as well as input from other scale manufacturers. The submitters provided a revised proposal to the NCWM following the release of the 2023 NCWM Publication 15. At the 2023 NCWM Annual Meeting, the NCWM S&T Committee updated the item with the most recent version in the carryover report. This latest version has an Informational status and the item will be further discussed and assessed at the fall 2023 regional weights and measures association meetings.

EVF—Electric Vehicle Fueling Systems

EVF 23.4. This proposal submitted by Power Measurements, LLC is intended to update the existing required tests in NIST HB 44 (Section 3.40. Electric Vehicle Fueling Systems) specified for use to determine the accuracy of alternating current (AC) and direct current (DC) systems. The proposal has a Developing status and will expand the number of test points over a specific range of operating conditions for the test of an electric vehicle supply equipment (EVSE) system. The NIST United States National Work Group on Measuring Systems for Electric Vehicle Fueling and Submetering: Electric Vehicle Fueling Equipment Subgroup has also kept the Submitter and NCWM S&T Committee apprised of its ongoing work to develop a more suitable minimum set of test procedures to determine the performance of both AC and DC EVSE systems.

EVF 23.6. The proposal submitted by Florida Department of Agriculture and Consumer Services, Electrify America, Tesla, EVGo, and Siemens was revised by the NCWM S&T Committee after comments during the 2023 NCWM Interim and Annual Meetings. The proposal would amend NIST HB 44, Section 3.40 to require either a physical or digitally formatted marking of accuracy for DC systems meeting ± 5% accuracy requirements. The proposed dual tolerance structure that would permit the wider ± 5% accuracy tolerance is permitted up through 2034. It also includes revisions to acceptance and maintenance tolerances for DC fast charging (DCFC) EV chargers that will be based on the pre- or post-2024 installation and placed into service date of this equipment. The current NIST HB 44 enforcement date of January 1, 2028, for DC systems tolerances adopted in July 2022 remains in effect. The proposal was voted on at the 2023 NCWM Annual Meeting but did not receive enough votes to be adopted and was returned to the NCWM S&T Committee for further consideration and deliberation by stakeholders.

EVF 23.7. The proposal submitted by Electrify America has a Developing status and would amend NIST HB 44, Section 3.40 to establish a larger range of test points that are usable for performing the light load tests, remove the requirement that the load be determined either through the pilot signal (AC systems) or digital communication (DC systems), and add a new definition for the term maximum deliverable amperes which is the value that the NIST HB 44 test procedures use to establish the range of points where tests are performed to determine an electric vehicle fueling system's accuracy. The NCWM S&T Committee requested this proposal and Item EVF 23.4 be considered in the ongoing work to develop a more suitable single set of minimum of test procedures for use in determining the performance of both AC and DC EVSE systems.

LPG—Liquid Petroleum Gas and Anhydrous Ammonia Liquid-Measuring Devices

LPG—23.1 This proposal submitted by the National Propane Gas Association and U-Haul International addresses practical issues that propane retailers encounter when trying to comply with zero-set-back interlock requirements in NIST HB 44 for electronic stationary and electronic vehicle-mounted propane meters and stationary retail motor-fuel devices used to dispense propane. The intent of the proposal is to exempt the required use of zero-set-back interlock systems in a device used to both dispense liquified petroleum gas for use as a vehicle motor-fuel and in filling containers/cylinders for other than motor-fuel applications. The NCWM S&T Committee at the 2023 NCWM Annual Meeting downgraded the status of the item from Voting to Informational to allow more time to better understand how the proposed changes will impact stakeholders.

OTH—Other Items

OTH 16.1. The NIST United States National Work Group on Measuring Systems for Electric Vehicle Fueling and Submetering: Watthour-Type Electric Meters Subgroup has worked to develop a proposed comprehensive set of legal metrology requirements for electric watthour meters used in submeter applications in residences and businesses (not intended to address utility metering under the authority of entities such as the local utility commission). The NCWM S&T Committee downgraded the proposed new code under consideration at the 2023 NCWM Annual Meeting from a Voting status to Informational status following comments heard during open hearings. Current and new recommendations to language for this proposed new code will be heard at the fall 2023 regional weights and measures association meetings.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023–19650 Filed 9–11–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Artificial Intelligence Advisory Committee Law Enforcement Subcommittee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Revised notice of open meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the National Artificial Intelligence Advisory Committee's Law Enforcement Subcommittee (NAIAC–LE or Subcommittee) will hold an open meeting via web conference on September 12, 2023, from 1 p.m. to 2 p.m. Eastern time. The primary purpose of this meeting is for the Subcommittee members to share and discuss updates on goals and deliverables. The final agenda will be posted to the NAIAC website: *ai.gov/naiac/.*

DATES: The meeting will be held on Tuesday, September 12, 2023 from 1 p.m. to 2 p.m. Eastern time.

ADDRESSES: The meeting will be held via web conference. Please see the **SUPPLEMENTARY INFORMATION** section of this notice for instructions on how to attend.

FOR FURTHER INFORMATION CONTACT: Alicia Chambers, Committee Liaison Officer, National Institute of Standards and Technology, 100 Bureau Drive, MS 1000, Gaithersburg, MD 20899, *alicia.chambers@nist.gov* or 301–975–5333, or Melissa Banner, Designated Federal Officer, National Institute of Standards and Technology, 100 Bureau Drive, MS 1000, Gaithersburg, MD 20899, *melissa.banner@nist.gov* or 301–975–5245. Please direct any inquiries to *naiac@nist.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. 1001 *et seq.,* notice is hereby given that the NAIAC–LE will meet on Tuesday, September 12, 2023 from 1:00 p.m. to 2:00 p.m. Eastern time. The meeting will be open to the public and will be held virtually via web conference. The primary purpose of this meeting is for the Subcommittee members to share and discuss updates on goals and deliverables. The final agenda will be posted to the NAIAC website: *ai.gov/naiac/.*

The NAIAC–LE is authorized by Section 5104 of the National Artificial Intelligence Initiative Act of 2020 (Pub. L. 116–283). The Subcommittee advises the President through NAIAC on matters related to the development of artificial intelligence relating to law enforcement. Additional information on the NAIAC–LE is available at *ai.gov/naiac/.*

Comments: Individuals and representatives of organizations who would like to offer comments and suggestions related to items on the Subcommittee's agenda for this meeting are invited to submit comments in advance of the meeting. Approximately ten minutes will be reserved for public comments, which will be read on a first-come, first-served basis. Please note that all comments submitted via email will be treated as public documents and will be made available for public inspection. All comments must be submitted via email with the subject line ''September 12, 2023, NAIAC–LE Meeting Comments'' to *naiac@nist.gov* by 5 p.m. Eastern Time, Monday, September 11, 2023. NIST will not accept comments accompanied by a request that part or all of the comment be treated confidentially because of its business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive, protected, or personal information, such as account numbers, Social Security numbers, or names of other individuals.

Virtual Admittance Instructions: The meeting will be broadcast via web conference. Registration is required to view the web conference. Instructions to register will be made available on *ai.gov/naiac/#MEETINGS.* Registration will remain open until the conclusion of the meeting.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023–19656 Filed 9–11–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD326]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice; Issuance of one Endangered Species Act incidental take permit; availability of the Final Environmental Assessment and Finding of No Significant Impact.

SUMMARY: Notice is hereby given that NMFS issued an Incidental Take Permit

(ITP) to Port Blakely, pursuant to the Endangered Species Act (ESA) of 1973, as amended, for the incidental take of ESA-listed species on the John Franklin Eddy Forestlands located in the Clackamas River and Molalla River basins of Oregon. The ITP is issued for a duration of 50 years. The ITP application and Port Blakely Habitat Conservation Plan (HCP) were submitted to NMFS pursuant to the ESA. NMFS also prepared a Final Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) under the National Environmental Policy Act (NEPA) associated with NMFS' issuance of the ITP for the HCP.

DATES: The ITP (No. 26729) was issued to Port Blakely on September 8, 2023, and the necessary countersignatures by the applicants were received on September 8, 2023. The expiration date of the ITP is September 1, 2073. The issued ITP is subject to certain conditions set forth therein.

ADDRESSES: The permit, the Final EA and FONSI, and other related documents are available on the NMFS West Coast Region website at: *https://www.fisheries.noaa.gov/action/port-blakely-habitat-conservation-plan-john-franklin-eddy-forestlands.*

FOR FURTHER INFORMATION CONTACT: Annie Birnie, NMFS, via phone at 503–230–5407 or via email at *annie.birnie@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Included in the HCP

ESA-Listed Species Covered by NMFS

- Chinook salmon (*Oncorhynchus tshawytscha*): threatened Lower Columbia River (LCR) evolutionarily significant unit (ESU); threatened Upper Willamette River (UWR) ESU;
- Coho salmon (*Oncorhynchus kisutch*): threatened LCR ESU;
- Steelhead (*Oncorhynchus mykiss*): threatened LCR distinct population segment (DPS); threatened UWR DPS.

ESA-Listed Species Covered by USFWS

- Bull trout (*Salvelinus confluentus*);
- Gray wolf (*Canis lupus*); and
- Northern spotted owl (*Strix occidentalis caurina*).

Non-ESA-Listed Species Covered by USFWS

- Pacific lamprey (*Lampetra tridentata*);
- Cascades frog (*Rana cascadae*);
- Coastal tailed frog (*Ascaphus truei*);
- Cascade torrent salamander (*Rhyacotriton cascadae*);
- Oregon slender salamander (*Batrachoseps wright*);
- Western/North Pacific pond turtle (*Actinemys marmorata marmorata);*
- Northern goshawk (*Accipiter gentilis*);
- Pacific Fisher (*Pekania pennanti*);
- Townsend's big-eared bat (*Corynorhinus townsendii spp.*);
- Hoary bat (*Lasiurus cinereus*);
- Silver-haired bat (*Lasionycteris noctivagans*);
- Fringed myotis bat (*Myotis thysanodes*);
- Long-eared myotis bat (*Myotis evotis*);
- Long-legged myotis bat (*Myotis volans*).

Background

Section 10(a)(1)(B) of the ESA, as amended (16 U.S.C. 1531 *et seq.*), authorizes NMFS and USFWS to issue ITPs to non-Federal parties for potential incidental take of endangered or threatened species as a result of covered activities. In support of its applications for such ITPs, Port Blakely prepared an HCP that provides an assessment of impacts of its timber harvest, silviculture, and road management activities in the Clackamas River and Molalla River basins of Oregon on the identified species; measures to monitor, minimize and mitigate for those impacts on those species; and procedures to account for unforeseen or extraordinary circumstances. NMFS received the ITP application and draft HCP on February 10, 2022.

On June 14, 2022, NMFS published a Notice of Receipt and Notice of Availability in the **Federal Register** (87 FR 35970) asking for public comments on the draft HCP and the associated draft NEPA EA. NMFS received two comments and these comments were addressed as changes to the final EA. The requested permit has been issued under the authority of the ESA on September 8, 2023. This ITP authorizes the incidental take of ESA-listed species set forth in the HCP over the 50-year permit term.

Authority

Section 9 of the ESA and Federal regulations prohibit the taking of a species listed as endangered or threatened. The ESA defines ''take'' to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307

Dated: September 5, 2023.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–19437 Filed 9–11–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD320]

Nominations to the Marine Mammal Scientific Review Groups

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

ACTION: Notice; request for nominations.

SUMMARY: As required by the Marine Mammal Protection Act (MMPA), the Secretary of Commerce established three independent regional scientific review groups (SRGs) to provide advice on a range of marine mammal science and management issues. NMFS conducted a membership review of the Alaska, Atlantic, and Pacific SRGs, and is soliciting nominations for new members to fill vacancies and gaps in expertise (see below).

DATES: Nominations must be received by October 12, 2023.

ADDRESSES: Nominations can be emailed to *Zachary.Schakner@noaa.gov,* Assessment Branch, Office of Science and Technology, National Marine Fisheries Service, Attn: SRGs.

FOR FURTHER INFORMATION CONTACT: Dr. Zachary Schakner, Office of Science and Technology, 301–427–8106, *Zachary.Schakner@noaa.gov.* Information about the SRGs, including the SRG Terms of Reference, is available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/scientific-review-groups.*

SUPPLEMENTARY INFORMATION: Section 117(d) of the MMPA (16 U.S.C. 1386(d)) directs the Secretary of Commerce to establish three independent regional SRGs to advise the Secretary (authority delegated to NMFS). The Alaska SRG advises on marine mammals that occur in waters off Alaska that are under the jurisdiction of the United States. The Pacific SRG advises on marine mammals that occur in waters off the U.S. West Coast, Hawaiian Islands, and the U.S. Territories in the Central and Western Pacific that are under the

jurisdiction of the United States. The Atlantic SRG advises on marine mammals that occur in waters off the Atlantic coast, Gulf of Mexico, and U.S. Territories in the Caribbean.

SRG members are highly qualified individuals with expertise in marine mammal biology and ecology, population dynamics and modeling, commercial fishing technology and practices, and stocks taken under section 101(b) of the MMPA. The SRGs provide expert reviews of draft marine mammal stock assessment reports and other information related to the matters identified in section 117(d)(1) of the MMPA, including:

A. Population estimates and the population status and trends of marine mammal stocks;

B. Uncertainties and research needed regarding stock separation, abundance, or trends, and factors affecting the distribution, size, or productivity of the stock;

C. Uncertainties and research needed regarding the species, number, ages, gender, and reproductive status of marine mammals;

D. Research needed to identify modifications in fishing gear and practices likely to reduce the incidental mortality and serious injury of marine mammals in commercial fishing operations;

E. The actual, expected, or potential impacts of habitat destruction, including marine pollution and natural environmental change, on specific marine mammal species or stocks, and for strategic stocks, appropriate conservation or management measures to alleviate any such impacts; and

F. Any other issue which the Secretary or the groups consider appropriate.

SRG members collectively serve as independent advisors to NMFS and the U.S. Fish and Wildlife Service and provide their expert review and recommendations through participation in the SRG. Members attend annual meetings and undertake activities as independent persons providing expertise in their subject areas. Members are not appointed as representatives of professional organizations or particular stakeholder groups, including government entities, and are not permitted to represent or advocate for those organizations, groups, or entities during SRG meetings, discussions, and deliberations.

SRG membership is voluntary, and, except for reimbursable travel and related expenses, service is without pay. The term of service for SRG members is 3 years, and members may serve up to three consecutive terms if reappointed.

NMFS annually reviews the expertise available on the SRG and identifies gaps in the expertise that is needed to provide advice pursuant to section 117(d) of the MMPA. In conducting the reviews, NMFS attempts to achieve, to the maximum extent practicable, a balanced representation of viewpoints among the individuals on each SRG.

Expertise Solicited

For the Alaska SRG, NMFS seeks individuals with expertise in one or more of the following areas (not in order of priority): Abundance estimation, especially distance sampling and mark-recapture methods and survey design; Passive acoustic data collection and analysis; Climate and oceanographic changes impacting marine mammals, particularly in the Arctic; Quantitative ecology, population dynamics, modeling, and statistics, especially as related to abundance, bycatch, and distribution; Anthropogenic impacts, particularly fisheries bycatch and depredation; vessel strikes; effects of anthropogenic sound; Marine mammal health and ecotoxicology; contaminants and algal blooms, toxicology, pollutants; Pinnipeds; genetics as a method of identifying population structure; offshore oil impacts.

For the Pacific SRG (including waters off the Pacific coast, Hawaiian Islands and the U.S. Territories in the Central and Western Pacific), NMFS seeks individuals with expertise in one or more of the following areas (not in order of priority): Population structure based on genetic data, incorporation of new methodological or technological advancements for data collection/analysis (*e.g.,* -omics, eDNA, microbiome); West Coast and Pacific Islands marine mammal expertise, including assessment, life history, ecology, or human-marine mammal interactions; Applied conservation and management, including evaluating bycatch or fisheries impacts on marine mammals; Expertise in identifying and delineating demographically independent populations based on multiple lines of evidence; West Coast and Pacific Islands fishing gear/techniques, including fishery/marine mammal interactions for State, Tribal, or regional/local fisheries; Oceanography or marine ecology, particularly decadal and long-term understanding and impacts of climate change; spatial movement ecology, telemetry, habitat modeling; Sea otters; Pinnipeds.

For the Atlantic SRG (including waters off the Atlantic coast, Gulf of Mexico, and U.S. Territories in the Caribbean), NMFS seeks individuals with expertise in one or more of the following highest priority areas: Large whale (especially North Atlantic right whales) population dynamics, biology and ecology; Small cetacean population dynamics and ecology with a focus on pelagic species and estuarine and nearshore bottlenose dolphins; Marine mammal—fishery interactions including fishing gear, fishing practices, and bycatch reduction; Impacts of oceanographic & ecosystem changes such as climate change, energy (renewable/non-renewable), or marine aquaculture on marine mammal populations; Quantitative skills relevant to marine mammal population assessment including, mark-recapture population estimation methods, bycatch estimation, and population dynamics modeling; Quantitative skills relevant to marine mammal habitat modeling; Ecology of Caribbean marine mammals especially humpback and sperm whales; Manatee population dynamics and ecology.

Submitting a Nomination

Nominations for new members should be sent to Dr. Zachary Schakner in the NMFS Office of Science & Technology (see **ADDRESSES**) and must be received by October 12, 2023. Nominations should be accompanied by the individual's curriculum vitae and detailed information regarding how the recommended person meets the minimum selection criteria for SRG members (see below). Nominations should also include the nominee's name, address, telephone number, and email address. Self-nominations are acceptable.

Selection Criteria

Although the MMPA does not explicitly prohibit Federal employees from serving as SRG members, NMFS interprets MMPA section 117(d)'s reference to the SRGs as ''independent'' bodies that are exempt from Federal Advisory Committee Act requirements to mean that SRGs are intended to augment existing Federal expertise and are not composed of Federal employees or contractors.

When reviewing nominations, NMFS, in consultation with the U.S. Fish and Wildlife Service, will consider the following six criteria:

(1) Ability to make time available for the purposes of the SRG;

(2) Knowledge of the species (or closely related species) of marine mammals in the SRG's region;

(3) Scientific or technical achievement in a relevant discipline, particularly the areas of expertise identified above, and the ability to serve as an expert peer reviewer for the topic;

(4) Demonstrated experience working effectively on teams;

(5) Expertise relevant to current and expected needs of the SRG, in particular, expertise required to provide adequate review and knowledgeable feedback on current or developing stock assessment issues, techniques, *etc.* In practice, this means that each member should have expertise in more than one topic as the species and scientific issues discussed in SRG meetings are diverse; and

(6) No conflict of interest with respect to their duties as a member of the SRG.

Next Steps

Following review, nominees who are identified by NMFS as potential new members must be vetted and cleared in accordance with Department of Commerce policy. NMFS will contact these individuals and ask them to provide written confirmation that they are not registered Federal lobbyists or registered foreign agents, and to complete a confidential financial disclosure form, which will be reviewed by the Ethics Law and Programs Division within the U.S. Department of Commerce's Office of General Counsel. All nominees will be notified of a selection decision in advance of the 2023 SRG meetings.

Dated: September 7, 2023.

Evan Howell,

Director, Office of Science and Technology, National Marine Fisheries Service.

[FR Doc. 2023–19642 Filed 9–11–23; 8:45 am]

BILLING CODE 3510–22–P

COMMISSION OF FINE ARTS

Notice of Meeting

Per 45 CFR Chapter XXI § 2102.3, the next meeting of the U.S. Commission of Fine Arts is scheduled for September 21, 2023, at 9:00 a.m. and will be held via online videoconference. Items of discussion may include buildings, infrastructure, parks, memorials, and public art.

Draft agendas, the link to register for the online public meeting, and additional information regarding the Commission are available on our website: *www.cfa.gov.* Inquiries regarding the agenda, as well as any public testimony, should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by emailing *cfastaff@cfa.gov;* or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated: September 1, 2023 in Washington, DC.

Susan M Raposa,

Technical Information Specialist.

[FR Doc. 2023–19802 Filed 9–11–23; 8:45 am]

BILLING CODE 6330–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 88 FR 60442, September 1, 2023.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m. EDT, Friday, September 8, 2023.

CHANGES IN THE MEETING: The meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, Secretary of the Commission, 202–418–5964.

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

Dated: September 7, 2023.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2023–19734 Filed 9–8–23; 11:15 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision for Comprehensive Airspace Initiative at Moody Air Force Base, Georgia Environmental Impact Statement

ACTION: Notice of availability of Record of Decision.

SUMMARY: On August 15, 2023, the Department of the Air Force (DAF) signed the Record of Decision (ROD) for Comprehensive Airspace Initiative at Moody Air Force Base, Georgia, Environmental Impact Statement.

ADDRESSES: Mr. Lorence Busker, 23rd Civil Engineer Squadron, 3485 Georgia Street, Moody Air Force Base, Georgia 31699–1707, Telephone: (229) 257–2396; *lorence.busker@us.af.mil.*

SUPPLEMENTARY INFORMATION: The DAF has selected Modified Alternative 1: Create the Corsair North Low, Corsair South Low, Mustang Low, and Warhawk Low Military Operations Areas (MOAs) with a floor of 1,000 ft above ground level (AGL) and a ceiling of 7,999 ft above mean sea level (MSL) beneath and within the lateral confines of the existing Corsair North, Corsair South, Mustang and Warhawk MOAs, respectively; create the Thud Low MOA with a floor of 4,000 ft AGL and a ceiling of 7,999 ft MSL beneath and within the lateral confines of the existing Thud MOA; create Grand Bay MOA with a floor of 100 ft AGL and a ceiling of 499 ft AGL beneath and within the lateral confines of the existing Restricted Area R–3008C; and lower the floor of Moody 2 North MOA from 500 ft AGL to 100 ft AGL. Based on this decision, the DAF will request the Federal Aviation Administration modify the low-altitude airspace floors to enhance low-altitude training within the Moody Airspace Complex.

The DAF decision documented in the ROD was based on matters discussed in the Final Environmental Impact Statement, inputs from the public and regulatory agencies, and other relevant factors. The Final Environmental Impact Statement was made available to the public on May 19, 2023, through a Notice of Availability in the **Federal Register** (88 FR 32215) with a waiting period that ended on June 20, 2023.

Authority: This Notice of Availability is published pursuant to the regulations (40 CFR part 1506.6) implementing the provisions of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and the Air Force's Environmental Impact Analysis Process (32 CFR parts 989.21(b) and 989.24(b)(7)).

Mia Day,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2023–19557 Filed 9–11–23; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[ARY–230418B–JA]

Notice of Intent To Grant a Joint Ownership Agreement With an Exclusive Patent License

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of intent.

SUMMARY: Pursuant to the Bayh-Dole Act and implementing regulations, the Department of the Air Force hereby gives notice of its intent to grant a joint ownership agreement with an Exclusive Patent License to Licensee, Battelle Memorial Institute having a place of business at 505 King Avenue, Columbus, Ohio 43201.

DATES: Written objections must be filed no later than fifteen (15) calendar days after the date of publication of this Notice.

ADDRESSES: Submit written objections to Dr. Griffin Romigh, Lead, Office of Research and Technology Applications (ORTA), AFRL/RY—Sensors Directorate, Bldg. 600, 2nd Floor, 2241 Avionics Circle, Wright-Patterson AFB, OH 45433; Phone (937) 713–3494; or Email: *griffin.romigh@us.af.mil.* Include Docket No. ARY–230418B–JA in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Dr. Griffin Romigh, Lead, Office of Research and Technology Applications (ORTA), AFRL/RY—Sensors Directorate, Bldg. 600, 2nd Floor, 2241 Avionics Circle, Wright-Patterson AFB, OH 45433; Phone (937) 713–3494; or Email: *griffin.romigh@us.af.mil.*

Abstract of patent application(s): An integrated circuit (IC) validation method consisting of means to acquire an image of an IC under test by scanning an optical beam over the IC under test to optically inject carriers into the IC under test and measuring an output signal generated by the IC under test in response to the optical carrier injection (*e.g.,* Two-photon Optical Beam Induced Current—TOBIC); computing a comparison image between the image of the IC under test and a reference image; and identifying suspect regions of the IC under test based on the computed difference image.

Intellectual property: U.S. Application Serial No. 63/343,204, filed on May 18, 2022 entitled ''Non-Destructive Verification of Integrated Circuits''.

The Department of the Air Force may grant the prospective license unless a timely objection is received that sufficiently shows the grant of the license would be inconsistent with the Bayh-Dole Act or implementing regulations. A competing application for a patent license agreement, completed in compliance with 37 CFR 404.8 and received by the Air Force within the period for timely objections, will be treated as an objection and may be considered as an alternative to the proposed license.

Authority: 35 U.S.C. 209; 37 CFR 404.

Mia Day,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2023–19596 Filed 9–11–23; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Negotiation of a Reciprocal Defense Procurement Agreement With the Federative Republic of Brazil

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for public comments.

SUMMARY: On behalf of the U.S. Government, DoD is contemplating negotiating and concluding a new Reciprocal Defense Procurement Agreement with the Federative Republic of Brazil. DoD is requesting industry feedback regarding its experience in public defense procurements conducted by or on behalf of the Brazilian Ministry of Defence or Armed Forces.

DATES: Comments must be received by October 12, 2023.

ADDRESSES: Submit comments by email to *jeffrey.c.grover.civ@mail.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Grover, telephone +1–703–380–9783.

SUPPLEMENTARY INFORMATION: DoD has concluded Reciprocal Defense Procurement (RDP) Agreements with 28 qualifying countries, as defined in the Defense Federal Acquisition Regulation Supplement (DFARS) 225.003, at the level of the Secretary of Defense and his counterpart. The purpose of an RDP Agreement is to promote rationalization, standardization, interchangeability, and interoperability of conventional defense equipment with allies and other friendly governments. These Agreements provide a framework for ongoing communication regarding market access and procurement matters that enhance effective defense cooperation.

RDP Agreements generally include language by which the Parties agree that their defense procurements will be conducted in accordance with certain implementing procedures. These procedures relate to—

- Publication of notices of proposed purchases;
- The content and availability of solicitations for proposed purchases;
- Notification to each unsuccessful offeror;
- Feedback, upon request, to unsuccessful offerors concerning the reasons they were not allowed to participate in a procurement or were not awarded a contract; and
- Provision for the hearing and review of complaints arising in connection with any phase of the procurement process to ensure that, to the extent possible, complaints are equitably and expeditiously resolved.

Based on the Agreement, each country affords the other country certain benefits on a reciprocal basis consistent with national laws and regulations. The benefits that the United States accords to the products of qualifying countries include—

- Offers of qualifying country end products are evaluated without applying the price differentials otherwise required by the Buy American statute and the Balance of Payments Program;
- The chemical warfare protection clothing restrictions in 10 U.S.C. 4862 and the specialty metals restriction in 10 U.S.C. 4863 do not apply to products manufactured in a qualifying country; and
- Customs, taxes, and duties are waived for qualifying country end products and components of defense procurements.

If DoD (for the U.S. Government) concludes a new RDP Agreement with the Federative Republic of Brazil and DoD executes a blanket public interest determination, as intended, Brazil will be listed as one of the qualifying countries at DFARS 225.872–1(a).

While DoD is evaluating Brazil's laws and regulations in this area, DoD would benefit from U.S. industry's experience in participating in Brazilian public defense procurements. DoD is, therefore, asking U.S. firms that have participated or attempted to participate in procurements by or on behalf of Brazil's Ministry of Defence and Armed Forces to let us know if the procurements were conducted with transparency, integrity, fairness, and due process in accordance with published procedures, and if not, the nature of the problems encountered.

DoD is also interested in comments relating to the degree of reciprocity that exists between the United States and Brazil when it comes to the openness of defense procurements to offers of products from the other country. Further, DoD would like to understand the degree to which U.S. industry feels that it would have equal and proportional access to the Brazilian defense market as Brazil would have under an RDP Agreement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–19604 Filed 9–11–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Board of Visitors, Marine Corps University; Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Navy (DoN), Department of Defense (DoD).

ACTION: Amendment to notice of open meeting.

SUMMARY: The Board of Visitors of the Marine Corps University (BOV MCU) will meet to review, develop and provide recommendations on all aspects of the academic and administrative policies of the University; examine all aspects of professional military education operations; and provide such oversight and advice, as is necessary, to facilitate high educational standards and cost effective operations. The Board will be focusing primarily on the internal procedures of Marine Corps University.

DATES: The meeting will be held on Monday, 18 September 2023, from 8:00 a.m. to 4:30 p.m. and 19 September from 08:30 a.m. to 12:00 p.m. Pacific Time Zone.

ADDRESSES: The meeting will be held at Camp Pendleton, California. The address is: Education Center, Building 23195, Marine Corps Air Station, Camp Pendleton, CA 92055. All sessions of the meeting will be open to the public via Microsoft Teams: *https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting?rtc=1*.

Meeting ID: 257 829 522 460 Passcode: nTQqLr

Or call in (audio only)

+1 323–792–6328, United States, Los Angeles

Phone Conference ID: 979 155 738#

FOR FURTHER INFORMATION CONTACT: Dr. Kim Florich, Director of Faculty Development and Outreach, Marine Corps University Board of Visitors, 2076 South Street, Quantico, Virginia 22134, telephone number 703–432–4837.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer, the Board of Visitors, Marine Corps University was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its September 18–19, 2023 meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Written Comments and Statements: Pursuant to Section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration at any time, but should be received by the Designated Federal Officer at least 1 business day prior to the meeting date so that the comments may be made available to the Board for their consideration prior to the meeting. Written statements should be submitted via email to: *Kimberly.florich@usmcu.edu*. Please note that since the Board operates under the provisions of the FACA, as amended, all submitted comments and public presentations may be treated as public documents and may be made available for public inspection, including, but not limited to, being posted on the board website.

Dated: September 7, 2023.

J. E. Koningisor,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2023–19663 Filed 9–11–23; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0124]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Evaluation of the Toolkit To Support Evidence-Based Algebra Instruction in Middle and High School—Recruitment Activities

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before October 12, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Amy Johnson, 303–844–4490.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Evaluation of the Toolkit to Support Evidence-Based Algebra Instruction in Middle and High School—Recruitment Activities.

OMB Control Number: 1850–NEW.

Type of Review: A new ICR.

Respondents/Affected Public: Individuals and households.

Total Estimated Number of Annual Responses: 30.

Total Estimated Number of Annual Burden Hours: 30.

Abstract: The current authorization for the Regional Educational Laboratories (REL) program is under the Education Sciences Reform Act of 2002, part D, section 174, (20 U.S.C. 9564), administered by the Department of Education, Institute of Education Sciences (IES), National Center for Education Evaluation and Regional Assistance (NCEE). The central mission and primary function of the RELs is to support applied research and provide technical assistance to state and local education agencies within their region (ESRA, Part D, section 174[f]). The REL program's goal is to partner with educators and policymakers to conduct work that is change-oriented and supports meaningful local, regional, or state decisions about education policies, programs, and practices to improve outcomes for students.

IES requests clearance for activities to support the recruitment of school districts to participate in an efficacy study of a Toolkit to Support Evidence-Based Algebra Instruction in Middle and High School as part of the REL

Central contract. A second OMB package, which will be submitted later this year, will request clearance for data collection instruments and the collection of district administrative data.

Even prior to the COVID–19 pandemic, Algebra I proved challenging for many students because of the extensive abstract thinking it requires (Katz, 2007; Susa et al., 2014). To help students succeed in Algebra I, REL Central is developing a toolkit of professional learning supports to help Algebra I teachers learn about, make sense of, plan for, and implement three evidence-based Algebra I teaching practices that were identified in the related What Work Clearinghouse (WWC) Practice Guide, ''Teaching Strategies for Improving Algebra Knowledge in Middle and High School Students.'' The toolkit contains the following three parts: (1) Initial Diagnostic and On-going Monitoring Instruments, (2) Professional Development Resources, and (3) Steps for Institutionalizing Supports for Evidence-Based Practice.

This study will assess whether implementing the toolkit improves teacher and student outcomes and will describe the implementation of the toolkit in study schools that use it. Using a school-level randomized controlled trial during the 2024–2025 school year, the study will estimate the impact of the toolkit on teachers' self-efficacy and their understanding and use of the promising practices, as well as on students' algebraic content knowledge, self-efficacy, and mathematical mindsets. To provide context for the impact estimates and inform future use of the toolkit, the study will also describe the implementation of the toolkit. The study plans to include 20 schools from three districts. To disseminate these findings, REL Central will produce a report for school leaders and teachers who are potential users of the toolkit.

Dated: September 7, 2023.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–19665 Filed 9–11–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0159]

Agency Information Collection Activities; Comment Request; State and EIS Record Keeping and Reporting Requirements Under Part C

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before November 13, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0159. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Diana Yu, (202) 245–6061.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: State and EIS Record Keeping and Reporting Requirements under Part C.

OMB Control Number: 1820–0682.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: State, local, and Tribal governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 4,268.

Abstract: The Office of Special Education and Rehabilitative Services needs to extend its Office of Management and Budget (OMB) Information Collection (IC): 1820–0682 State and Early Intervention Services (EIS) Record Keeping under Part C which is set to expire on 11/30/2023. These record-keeping requirements are not new and do not require reporting to the Secretary. The record keeping requirements outlined in this IC were created to reflect the requirements in part C of the Individuals with Disabilities Education Act (IDEA) in 20 U.S.C. 1431–1443 and the final Part C regulations. These regulations require the 56 State lead agencies (LAs) that receive IDEA Part C funds to collect and maintain information or data and, in some cases, report information or data to other public agencies or to the public. This Information Collection was created to ensure that all IDEA Part C information responsibilities are documented and have been submitted for OMB review.

Dated: September 7, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–19684 Filed 9–11–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0075]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Master Generic Plan for Customer Surveys, Focus Groups, and Challenges/Contests

AGENCY: Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before October 12, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Stephanie Valentine, 202–987–1805.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Master Generic Plan for Customer Surveys, Focus Groups, and Challenges/Contests.

OMB Control Number: 1800–0011.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments; Individuals or Households.

Total Estimated Number of Annual Responses: 225,703.

Total Estimated Number of Annual Burden Hours: 57,722.

Abstract: The Department is requesting an additional 30-day comment period due to the addition of challenges and contests to this generic clearance.

Surveys to be considered under this generic will only include those surveys that improve customer service or collect feedback about a service provided to individuals or entities directly served by ED. The results of these customer surveys will help ED managers plan and implement program improvements and other customer satisfaction initiatives. Focus groups that will be considered under the generic clearance will assess customer satisfaction with a direct service or will be designed to inform a customer satisfaction survey ED is considering. Surveys that have the potential to influence policy will not be considered under this generic clearance.

ED will also launch challenges or prize competitions on occasion in a short turnaround. The information collected for challenges and prize competitions will generally include the submitter's or other contact person's first and last name, organizational or school affiliation; email address or other contact information (to follow up if the submitted entry is selected as a finalist or winner); street address (to confirm that the submitter or affiliated school or organization for eligibility purposes); and a video or a narrative description for the specific challenge or contest. ED may also request information indicating the submitter's educational level, ethnicity, age range, gender, and race (to evaluate entrants' diversity and backgrounds). Finally, ED may ask for additional information tailored to the challenge or prize competition through structured questions. This information will enable the Department to create and administer challenges and prize competitions more effectively.

Upon entry or during the judging process, entrants under the age of 18 will be asked to confirm parental consent, which will require them to obtain and provide a parent or guardian signature in a format outlined in the specific criteria of each challenge or prize competition to qualify for the contest. To protect online privacy of minors, birthdate may be required by the website host to ensure the challenge platform meets the requirements of all privacy laws.

Dated: September 7, 2023.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–19649 Filed 9–11–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3211–010]

Power Authority of the State of New York; Notice of Availability of Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a new license to continue to operate and maintain the Hinckley (Gregory B. Jarvis) Hydroelectric Project (Jarvis Project). The Jarvis Project is located on West Canada Creek, near the Hamlet of Hinckley in the counties of Oneida and Herkimer, New York.

On June 27, 2022, the Commission issued a notice indicating that staff intended to prepare a multi-project Environmental Assessment (EA) for both the Jarvis Project and Erie Boulevard Hydropower, L.P.'s West Canada Creek Hydroelectric Project, because the projects are located adjacent to each other. However, the Fiscal Responsibility Act of 2023 now requires that an EA ''shall not exceed 75 pages, not including any citations or appendices'' (Fiscal Responsibility Act of 2023, Pub. L. 118–5, 107, 137 Stat 42 (2023)). A multi-project EA would have exceeded the page limit established in the Act, so staff has prepared a stand-alone draft Environmental Assessment (EA) for the Jarvis Project.

The draft EA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the draft EA via the internet through the Commission's Home Page (*http://www.ferc.gov/*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

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.*

Any comments should be filed within 45 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number (*i.e.,* P–3211–010).

For further information, contact Andy Bernick at (202) 502–8660 or by email at *andrew.bernick@ferc.gov.*

Dated: September 6, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–19653 Filed 9–11–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–14677–004]

Clark Canyon Hydro LLC; Notice of Application for Surrender of License Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of License.

b. *Project No:* P–14677–004.

c. *Date Filed:* August 17, 2023.

d. *Applicant:* Clark Canyon Hydro, LLC.

e. *Name of Project:* Clark Canyon Hydroelectric Project.

f. *Location:* The unconstructed project was to be located on the U.S. Bureau of Reclamation's Clark Canyon Dam, on the Beaverhead River near the city of Dillon, Beaverhead County, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Steve Disley, Clark Canyon Hydro, LLC, 1 Adelaide Street East, Suite 2410, Toronto, ON, M5C–2V9, Canada, (416) 646–2621.

i. *FERC Contact:* Nathan Scholl, (202) 502–7313, *nathan.scholl@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* October 6, 2023.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–14677–004. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee states that despite their best efforts over many years, they have been unable to secure a power purchase agreement (PPA) with rates high enough to offset rising construction costs and have been unable to create a profitable business case to construct, operate, and maintain the Project. Accordingly, the applicant has filed a license surrender application.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214,

respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

p. 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: September 6, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–19652 Filed 9–11–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2853–073]

Montana Department of Natural Resources and Conservation; Notice of Waiver Period for Water Quality Certification Application

On September 5, 2023, the Montana Department of Natural Resources and Conservation submitted to the Federal Energy Regulatory Commission (Commission) a copy of its application for a Clean Water Act section 401(a)(1) water quality certification filed with the Maine Department of Environmental Quality (Montana DEQ), in conjunction with the above captioned project. Pursuant to section 401 of the Clean Water Act [1] and section 4.34(b)(5) of the Commission's regulations,[2] a state certifying agency is deemed to have waived its certifying authority if it fails or refuses to act on a certification request within a reasonable period of time, which is one year after the date the certification request was received. Accordingly, we hereby notify Montana DEQ of the following:

Date Montana DEQ received the certification request: September 1, 2023.

If Montana DEQ fails or refuses to act on the water quality certification request on or before September 1, 2024, then the agency certifying authority is deemed waived pursuant to Section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: September 6, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–19655 Filed 9–11–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–127–000.

Applicants: Walton County Power, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Walton County Power, LLC.

Filed Date: 9/1/23.

Accession Number: 20230901–5218.

Comment Date: 5 p.m. ET 9/22/23.

Docket Numbers: EC23–128–000.

Applicants: SR DeSoto II, LLC, SR DeSoto III, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of SR DeSoto II, LLC, et al.

Filed Date: 9/1/23.

Accession Number: 20230901–5221.

Comment Date: 5 p.m. ET 9/22/23.

Docket Numbers: EC23–129–000.

Applicants: SR Millington, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of SR Millington, LLC.

Filed Date: 9/1/23.

Accession Number: 20230901–5224.

Comment Date: 5 p.m. ET 9/22/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1342–007; ER23–283–001.

Applicants: CP Energy Marketing (US) Inc., CP Energy Marketing (US) Inc.

Description: Triennial Market Power Analysis for Southwest Region of CP Energy Marketing (US) Inc.

Filed Date: 8/31/23.

Accession Number: 20230831–5285.

Comment Date: 5 p.m. ET 10/30/23.

Docket Numbers: ER23–1851–002.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amended Filing of ISA and CSA,SA Nos. 6917 and 6918; Queue No. AD1–031 to be effective 7/8/2023.

Filed Date: 9/5/23.

Accession Number: 20230905–5121.

Comment Date: 5 p.m. ET 9/26/23.

Docket Numbers: ER23–2766–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 7057; Queue No. AE2–345 to be effective 8/4/2023.

Filed Date: 9/5/23.

Accession Number: 20230905–5002.

Comment Date: 5 p.m. ET 9/26/23.

Docket Numbers: ER23–2767–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 217, Exhibit B.BKE–LIB to be effective 11/5/2023.

Filed Date: 9/5/23.

Accession Number: 20230905–5087.

Comment Date: 5 p.m. ET 9/26/23.

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

[1] 33 U.S.C. 1341(a)(1).

[2] 18 CFR 4.34(b)(5) (2022).

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: September 5, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–19583 Filed 9–11–23; 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: RP23–1033–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Formula Based Negotiated Rate—10/1/2023 Update to be effective 10/1/2023.
Filed Date: 9/6/23.
Accession Number: 20230906–5046.
Comment Date: 5 p.m. ET 9/18/23.

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: September 6, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–19630 Filed 9–11–23; 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: PR23–69–000.
Applicants: Dow Intrastate Gas Company.
Description: § 284.123(g) Rate Filing: Petition for Rate Approval to be effective 9/1/2023.
Filed Date: 9/1/23.
Accession Number: 20230901–5152.
Comment Date: 5 p.m. ET 9/22/23.
Protest Date: 5 p.m. ET 10/31/23.

Docket Numbers: PR23–70–000.
Applicants: BBT Alabama, LLC.
Description: § 284.123 Rate Filing: BBT Alabama Petition Rate Approval Filing to be effective 9/1/2023.
Filed Date: 9/1/23.
Accession Number: 20230901–5195.
Comment Date: 5 p.m. ET 9/22/23.

Docket Numbers: PR23–71–000.
Applicants: Columbia Gas of Ohio, Inc.
Description: § 284.123 Rate Filing: COH Rates effective Aug 29 2023 to be effective 8/29/2023.
Filed Date: 9/5/23.
Accession Number: 20230905–5004.
Comment Date: 5 p.m. ET 9/26/23.

Docket Numbers: RP23–972–000.
Applicants: ExxonMobil Oil Corporation, Nesson Gathering System LLC, XTO Energy Inc.
Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of ExxonMobil Oil Corporation, et al.
Filed Date: 9/1/23.
Accession Number: 20230901–5139.
Comment Date: 5 p.m. ET 9/13/23.

Docket Numbers: RP23–1029–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: § 4(d) Rate Filing: Amendments to Non-Conforming Agreements—Devon, EOG, Targa to be effective 9/1/2023.
Filed Date: 9/1/23.
Accession Number: 20230901–5110.
Comment Date: 5 p.m. ET 9/13/23.

Docket Numbers: RP23–1031–000.
Applicants: Viking Gas Transmission Company.
Description: § 4(d) Rate Filing: Amendment to Non-Conforming Agreement AF0059 to be effective 11/1/2023.
Filed Date: 9/5/23.
Accession Number: 20230905–5008.
Comment Date: 5 p.m. ET 9/18/23.

Docket Numbers: RP23–1032–000.
Applicants: Osaka Gas Trading & Export LLC.
Description: Petition for Limited Waiver of the Buy/Sell Prohibition of Osaka Gas Trading & Export LLC.
Filed Date: 9/1/23.
Accession Number: 20230901–5223.
Comment Date: 5 p.m. ET 9/13/23.

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.

Filings in Existing Proceedings

Docket Numbers: RP23–749–000.
Applicants: MountainWest Overthrust Pipeline, LLC.
Description: Report Filing: supplemental filing, meter point groups to be effective N/A.
Filed Date: 9/5/23.
Accession Number: 20230905–5077.
Comment Date: 5 p.m. ET 9/18/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

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: September 5, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–19586 Filed 9–11–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–1837–004.

Applicants: Florida Power & Light Company.

Description: Compliance filing: FPL Settlement Agreement Compliance Filing to be effective 7/13/2022.

Filed Date: 9/5/23.

Accession Number: 20230905–5163.

Comment Date: 5 p.m. ET 9/26/23.

Docket Numbers: ER22–2110–004.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Compliance Filing Notifying Commission of Tariff Part VIII Effective Date to be effective 10/5/2023.

Filed Date: 9/5/23.

Accession Number: 20230905–5145.

Comment Date: 5 p.m. ET 9/26/23.

Docket Numbers: ER23–1847–001.

Applicants: The Potomac Edison Company, PJM Interconnection, L.L.C.

Description: Refund Report: The Potomac Edison Company submits tariff filing per 35.19a(b): Potomac Edison submits Refund Report in Docket No. ER23–1847 to be effective N/A.

Filed Date: 9/5/23.

Accession Number: 20230905–5134.

Comment Date: 5 p.m. ET 9/26/23.

Docket Numbers: ER23–2415–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment to Designated Entity Agreement, SA No. 7000 in ER23–2415 to be effective 6/16/2023.

Filed Date: 9/5/23.

Accession Number: 20230905–5147.

Comment Date: 5 p.m. ET 9/26/23.

Docket Numbers: ER23–2416–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment to Designated Entity Agreement, SA No. 7001 in ER23–2416 to be effective 6/16/2023.

Filed Date: 9/5/23.

Accession Number: 20230905–5146.

Comment Date: 5 p.m. ET 9/26/23.

Docket Numbers: ER23–2769–000.

Applicants: Midcontinent Independent System Operator, Inc., Consumers Energy Company, Michigan Electric Transmission Company, LLC.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2023–09–06_SA 3536 Termination of METC–CE TSA to be effective 9/7/2023.

Filed Date: 9/6/23.

Accession Number: 20230906–5061.

Comment Date: 5 p.m. ET 9/27/23.

Docket Numbers: ER23–2770–000.

Applicants: Midcontinent Independent System Operator, Inc., Consumers Energy Company, Michigan Electric Transmission Company, LLC.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2023–09–06_SA 3315 Termination of METC–CE TSA to be effective 4/18/2023.

Filed Date: 9/6/23.

Accession Number: 20230906–5063.

Comment Date: 5 p.m. ET 9/27/23.

Docket Numbers: ER23–2771–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of WMPA, SA No. 6364; Queue No. AG2–374 re: breach to be effective 11/6/2023.

Filed Date: 9/6/23.

Accession Number: 20230906–5068.

Comment Date: 5 p.m. ET 9/27/23.

Docket Numbers: ER23–2772–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 7083; Queue No. AD1–155 to be effective 11/6/2023.

Filed Date: 9/6/23.

Accession Number: 20230906–5081.

Comment Date: 5 p.m. ET 9/27/23.

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.

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: September 6, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–19637 Filed 9–11–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket Nos.
Red Tailed Hawk Solar LLC	EG23–174–000
AEUG Union Solar LLC	EG23–175–000
Antelope Valley BESS, LLC	EG23–176–000
Rayburn Energy Station LLC	EG23–177–000
Trinity River Solar 1, LLC	EG23–178–000
Champion Solar 1, LLC	EG23–179–000

	Docket Nos.
Crossvine Solar 1, LLC	EG23–180–000
Granite Hill Solar, LLC	EG23–181–000
Jones City Solar, LLC	EG23–182–000
Mayapple Solar, LLC	EG23–183–000
Mountain Daisy Solar, LLC	EG23–184–000
Mowata Solar, LLC	EG23–185–000
Earthrise Gibson City Interconnection, LLC.	EG23–186–000
Earthrise Lincoln Interconnection, LLC.	EG23–187–000
Earthrise Shelby County Interconnection, LLC.	EG23–188–000
Earthrise Tilton Interconnection, LLC.	EG23–189–000
Earthrise Crete Interconnection, LLC.	EG23–190–000
ETEM Remediation Two LLC	EG23–191–000
Glover Creek Solar, LLC	EG23–192–000
PGR 2022 Lessee 9, LLC	EG23–193–000
Cascade Energy Storage, LLC	EG23–194–000
DeCordova BESS LLC	EG23–195–000
Crane 2 BESS, LLC	EG23–196–000
SR DeSoto II, LLC	EG23–197–000
SR DeSoto III, LLC	EG23–198–000
SR DeSoto III Lessee, LLC	EG23–199–000
SR Canadaville, LLC	EG23–200–000
SR Canadaville Lessee, LLC	EG23–201–000
SR Lambert I, LLC	EG23–202–000
SR Lambert II, LLC	EG23–203–000
TRS Fuel Cell, LLC	EG23–204–000
Algodon Solar Energy Holdings LLC.	EG23–205–000
Algodon Solar Energy LLC	EG23–206–000
Chisholm Trail Solar Energy Holdings LLC.	EG23–207–000
Flat Ridge 4 Wind, LLC	EG23–208–000
Chisholm Trail Solar Energy LLC	EG23–209–000
Flat Ridge 4 Wind Holdings LLC	EG23–210–000
Flat Ridge 5 Wind Energy Holdings LLC.	EG23–211–000
Flat Ridge 5 Wind Energy LLC	EG23–212–000
Lazbuddie Wind Energy LLC	EG23–213–000
Pixley Solar Energy Holdings LLC.	EG23–214–000
Pixley Solar Energy LLC	EG23–215–000
Lazbuddie Wind Energy Holdings LLC.	EG23–216–000
Last Mile Transmission LLC	EG23–217–000
Vikings Energy Farm LLC	EG23–218–000
Oak Ridge Solar, LLC	EG23–219–000]

Take notice that during the month of August 2023, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2022).

Dated: September 6, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–19635 Filed 9–11–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2701–061]

Erie Boulevard Hydropower, L.P.; Notice of Availability of Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a new license to continue to operate and maintain the West Canada Creek Hydroelectric Project (West Canada Creek Project). The West Canada Creek Project is located on West Canada Creek, in the counties of Oneida and Herkimer, New York.

On June 27, 2022, the Commission issued a notice indicating that staff intended to prepare a multi-project Environmental Assessment (EA) for both the West Canada Creek Project and Power Authority of the State of New York's Hinckley (Gregory B. Jarvis) Hydroelectric Project, because the projects are located adjacent to each other. However, the Fiscal Responsibility Act of 2023 now requires that an EA ''shall not exceed 75 pages, not including any citations or appendices'' (Fiscal Responsibility Act of 2023, Pub. L. 118–5, 107, 137 Stat 42 (2023)). A multi-project EA would have exceeded the page limit established in the Act, so staff has prepared a stand-alone draft Environmental Assessment (draft EA) for the West Canada Creek Project.

The draft EA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the draft EA via the internet through the Commission's Home Page (*http://www.ferc.gov/*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

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*.

Any comments should be filed within 45 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number (*i.e.,* P–2701–061).

For further information, contact Laurie Bauer at (202) 502–6519 or by email at *laurie.bauer@ferc.gov.*

Dated: September 6, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–19657 Filed 9–11–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2759–000]

Mammoth North LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Mammoth North LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426,

in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 25, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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: September 5, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–19587 Filed 9–11–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15317–000]

Littoral Power Systems, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On June 28, 2023, Littoral Power Systems, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Upper Cook Inlet Tidal Energy Project to be located in Cook Inlet, Alaska approximately 17 miles north-northwest of Kenai, Alaska and 9.5 miles northwest of Nikiski, Alaska. The sole purpose of a preliminary permit is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The project would consist of axial hydrokinetic turbines installed underwater at or proximate to one or more of four existing decommissioned natural gas drilling platforms (Baker, Shell-A, Shell-C, and Dillon) located within the Upper Cook Inlet. The drilling platforms, which are owned and operated by Hilcorp Alaska, LLC, would be the prime anchoring structures for the hydrokinetic equipment that would convert the energy of Cook Inlet's tidal currents into electrical power. The electrical energy would be transmitted via a new 25kV submarine cable to an existing onshore substation (the Bernice Lake substation owned by the Homer Electric Association, Inc.) located about 1.5 miles east-northeast of the East Foreland Lighthouse on the Kenai Peninsula. The length of the subsea cable from the drilling platforms to land would be between 3.5 and 5 miles, depending on the selected route, and the length of the land transmission line to the substation would be between 2 and 3 miles. Each hydrokinetic turbine would have a generating capacity of 1 megawatt (MW). The project would produce from 5,000 to 6,000 megawatt-hours (MWh) per year initially.

Applicant Contact: Mr. David Duquette, CEO, Littoral Power Systems, Inc., 5 Dover Street, Suite 102, New Bedford, MA 02740; Phone: (508) 436–4100.

FERC Contact: David Froehlich; email; *david.froehlich@ferc.gov;* phone (202) 502–6769.

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 filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.* Comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications should be submitted within 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters without prior registration using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please get in touch with FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll-free), or (202) 502–8659 (TTY). Instead of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15310–000.

More information about this project, including a copy of the application, can

be viewed or printed on the ''eLibrary'' link of the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–15317) in the docket number field to access a document. For assistance, do not hesitate to get in touch with FERC Online Support.

Dated: September 5, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–19568 Filed 9–11–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–480–001]

MIGC LLC; Notice of Request for Extension of Time

Take notice that on August 28, 2023, MIGC LLC (MIGC) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time (2023 Extension of Time Request), until September 10, 2024, to abandon certain compressor facilities and associated mainline capacity at its Python Compressor Station located in Converse County, Wyoming, in the Prior Notice Request for Authorization Under Blanket Certificate (Prior Notice) under Docket No. CP22–480–000. The Prior Notice requested authorization to abandon certain compressor facilities and associated mainline capacity at its Python Compressor Station located in Converse County, Wyoming. On July 11, 2022, the Commission issued a Notice of Request Under Blanket Authorization, which established a 60-day comment period, ending on September 9, 2022, to file protests. No protests were filed during the comment period, and accordingly the project was authorized on September 10, 2022 and by Rule should have been completed within one year.

In its 2023 Extension of Time Request, MIGC states that it is determining whether retention of all or a portion of the facilities and associated capacity authorized for abandonment may be necessary to meet changing market demands. MIGC explains that a recent shift in market conditions was unanticipated and presents an extenuating circumstance that may require the continued use of MIGC's compressor facilities at its Python Compressor Station. Although, MIGC stated in the Prior Notice request that local production of natural gas in the area that MIGC operates in Wyoming has been steadily declining over the past ten years, recent market conditions suggest that retaining the capacity associated with the Python Compressor Station may be the most efficient way to serve changing market needs while providing the least amount of environmental impact.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on MIGC's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10).

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for Natural Gas Act facilities when such requests are contested before order issuance. For those extension requests that are contested,[1] the Commission will aim to issue an order acting on the request within 45 days.[2] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[3] The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act.[4] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.[5] The OEP Director, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to Commission's Public Reference Room. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and three copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on, September 21, 2023.

Dated: September 6, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–19651 Filed 9–11–23; 8:45 am]

BILLING CODE 6717–01–P

[1] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2019).

[2] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

[3] *Id.* at P 40.

[4] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

[5] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2400–000]

Redonda PV LLC; Supplemental Notice That Filing Includes Request for Blanket Section 204 Authorization

This supplemental notice in the above-referenced proceeding of Redonda PV LLC's filing includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 12, 2023.

The Commission encourages electronic submission of protests and

interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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: September 5, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–19582 Filed 9–11–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6896–079]

Hypower, Inc.; Hypower, LLC; Notice of Application of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On August 11, 2023, Hypower, Inc., (transferor) filed an application for a transfer of license of the 14.5-megawatt Forks of Butte Project No. 6896.[1] The project is located on Butte Creek, near the towns of Paradise and Magalia, in Butte County, California. The project occupies federal lands administered by the Bureau of Land Management.

The applicant seeks Commission approval to convert the license for the Forks of Butte Project from Hypower, Inc., to a limited liability company (Hypower, LLC or transferee). The transferee will be required by the Commission to comply with all the requirements of the license as though it were the original licensee.

Applicant Contact: Wayne Rogers, Hypower, Inc., c/o Synergics Energy Services, LLC, 191 Main Street # 3, Annapolis, MD 21401, Phone: 410–268–8820, Email: *wrogers@synergics.com;* and

Shannon E. O'Neil, Derek D. Green, Davis Wright Tremaine LLP, Suite 500 East, 1301 K Street NW, Washington, DC 20005–3317, Phone: 202–973–4209, and 503–778–5264, Email: *shannononeil@dwt.com* and *derekgreen@dwt.com.*

FERC Contact: Anumzziatta Purchiaroni, Phone: (202) 502–6191, Email: *Anumzziatta.purchiaroni@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

In lieu of electronic filing, you may submit a paper copy. Submissions sent via U.S. Postal Service must be addressed to, Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to, Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–6896–079. Comments emailed to Commission staff are not considered part of the Commission record.

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: September 6, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–19654 Filed 9–11–23; 8:45 am]

BILLING CODE 6717–01–P

[1] *Energy Growth Group, Butte Creek, Improvement Company, Energy Growth Partnership, and County of Butter,* 37 FERC ¶ 62,276 (1986). Subsequently, on July 1, 1998, the project was transferred to Hypower, Inc.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15229–001]

Alabama Power Company; Notice of Effectiveness of Withdrawal of Notice of Intent

On April 14, 2023, Alabama Power Company (Alabama Power) filed a Notice of Intent (NOI) for the proposed 1,600-megawatt Chandler Mountain Pumped Storage Project. The project would have been located on Little Canoe Creek East and Chandler Mountain in Etowah and St. Clair Counties, near the town of Steele, Alabama. On August 17, 2023, Alabama Power filed a notice of withdrawal of the NOI for the above-referenced project.

No motion in opposition to the notice of withdrawal has been filed, and the Commission has taken no action to disallow the withdrawal. Pursuant to

Rule 216(b) of the Commission's Rules of Practice and Procedure,[1] the withdrawal of the NOI became effective on September 1, 2023, and this prefiling process is hereby terminated.

Dated: September 5, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–19570 Filed 9–11–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2764–000]

Northeastern Power & Gas, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Northeastern Power & Gas, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 25, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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Dated: September 5, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–19581 Filed 9–11–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEJECR–2023–0099; FRL–11361–01–OEJECR]

White House Environmental Justice Advisory Council; Notification of Virtual Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of a public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the U.S. Environmental Protection Agency (EPA) hereby provides notice that the White House Environmental Justice Advisory Council (WHEJAC) will meet on the date and time described below. Due to unforeseen administrative circumstances, EPA is announcing this meeting with less than 15 calendar days public notice. The meeting is open to the public. The meeting is open to the public. For additional information about registering to attend the meeting or to provide a public comment, please see REGISTRATION under **SUPPLEMENTARY INFORMATION**. Pre-registration is required.

DATES: The WHEJAC will convene a virtual public meeting on Tuesday, September 26, 2023, from approximately 3 to 8 p.m. EDT. Meeting discussions will focus on several topics including, but not limited to, workgroup activities, proposed recommendations for the Council on Environmental Quality (CEQ) and the White House Environmental Justice Interagency Council (IAC), CEQ briefings, and a new formal charge for the WHEJAC. A public comment period relevant to current WHEJAC charges will be considered by the WHEJAC at the meeting on Tuesday, September 26, 2023, (see **SUPPLEMENTARY INFORMATION**). Members of the public who wish to participate during the public comment period must register by 11:59 p.m., EDT, Thursday, September 21, 2023.

FOR FURTHER INFORMATION CONTACT: Audrie Washington, WHEJAC Designated Federal Officer, U.S. EPA; email: *whejac@epa.gov;* telephone: (202) 441–7295. Additional information about the WHEJAC is available at *https://www.epa.gov/environmentaljustice/white-house-environmental-justice-advisory-council.*

SUPPLEMENTARY INFORMATION: The Charter of the WHEJAC (available at *https://www.epa.gov/system/files/documents/2023-03/2023%20White%20House%20Environmental%20Justice%20Advisory%20Council%20Charter.pdf*) states that the advisory committee will provide independent advice and recommendations to the Chair of CEQ and to the IAC. The WHEJAC provides advice and recommendations about broad cross-cutting issues related, but not limited, to issues of environmental justice and pollution reduction, energy, climate change mitigation and resiliency, environmental health, and racial inequity. The WHEJAC's efforts include a broad range of strategic, scientific, technological, regulatory, community engagement, and economic issues related to environmental justice.

[1] 18 CFR 385.216(b) (2022).

I. Registration

Individual registration is required for the public meeting. Information on how to register is located at *https://www.epa.gov/environmentaljustice/white-house-environmental-justice-advisory-council.* Registration for the meeting is available until the scheduled end time of the meeting. Registration to speak during the public comment period will close at 11:59 p.m., EDT, on Thursday, September 21, 2023. When registering, please provide your name, organization, city and state, and email address for follow up. Please also indicate whether you would like to provide public comment during the meeting, or if you are submitting written comments.

A. Public Comment

The WHEJAC is interested in receiving public comments relevant to the following charges, topics, and questions currently under consideration: (1) the Climate and Economic Justice Screening Tool; (2) the Environmental Justice Scorecard; (3) carbon management; (4) ways that the WHEJAC could recommend advancing environmental justice through a whole-of-government approach; and (5) environmental justice issues affecting Indigenous Peoples and Tribal Nations. With respect to environmental justice issues affecting indigenous peoples and tribal nations, the WHEJAC Indigenous Peoples and Tribal Nations Workgroup is particularly interested in receiving comments on: Examples of environmental hazards of particular concern for indigenous peoples and tribal nations (for example, environmental hazards related to Federal activities that may affect sacred sites and areas of cultural significance, cultural or other traditions or practices, subsistence, and ways of life); ways in which the Federal Government can address community impacts on, and concerns of, indigenous peoples and tribal nations; and ways in which the incorporation of indigenous knowledge into Federal decision-making could help address environmental hazards and environmental justice concerns. More information on WHEJAC workgroup charges is located online at: *https://www.epa.gov/environmentaljustice/white-house-environmental-justice-advisory-council,* under WHEJAC Membership and Workgroups.

Priority to speak during the meeting will be given to public commenters with comments relevant to the topics and questions listed above. Every effort will be made to hear from as many registered public commenters during the time specified on the agenda. Individuals or groups making remarks during the public comment period will be limited to three (3) minutes. Please be prepared to briefly describe your issue and your recommendation relevant to the current charges, topics, and questions under consideration by the WHEJAC. Submitting written comments for the record is strongly encouraged. You can submit your written comments in three different ways: (1) by creating comments in the Docket ID No. EPA–HQ–OEJECR–2023–0099 at *https://www.regulations.gov,* (2) by using the webform at *https://www.epa.gov/environmentaljustice/forms/white-house-environmental-justice-advisory-council-whejac-public-comment,* and (3) by sending comments via email to *whejac@epa.gov.* Written comments can be submitted through October 10, 2023.

B. Information About Services for Individuals With Disabilities or Requiring English Language Translation Assistance

To request special accommodations for a disability or other assistance, please submit your request at least five (5) working days prior to the meeting to give EPA sufficient time to process your request. All requests should be sent to the email listed in the **FOR FURTHER INFORMATION CONTACT** section.

Matthew Tejada,

Deputy Assistant Administrator for Environmental Justice, Office of Environmental Justice and External Civil Rights.

[FR Doc. 2023–19608 Filed 9–11–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11012–01–OAR]

Official Release of the MOVES4 Motor Vehicle Emissions Model for SIPs and Transportation Conformity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of the latest MOtor Vehicle Emission Simulator model major release (MOVES4) for official purposes outside of California. MOVES4 is the latest version of EPA's state-of-the science modeling tool for estimating emissions from cars, trucks, buses, and motorcycles based on the latest data and regulations. MOVES4 is available for use in state implementation plans (SIPs) and transportation conformity analyses outside of California. This notice starts a two-year grace period before MOVES4 will need to be used as the latest EPA emissions model for transportation conformity determinations outside of California, both in new regional emissions analyses and in new hot-spot analyses.

DATES: EPA's announcement of the MOVES4 emissions model for SIPs and transportation conformity analyses in states other than California is effective September 12, 2023. This announcement starts a two-year transportation conformity grace period that ends on September 12, 2025. After this date, MOVES4 will need to be used as the latest EPA emissions model for new transportation conformity analyses outside of California in both regional emissions analyses and in hot-spot analysis.

FOR FURTHER INFORMATION CONTACT: For technical model questions regarding the official release or use of MOVES4, please email EPA at *mobile@epa.gov.* For questions about SIPs, contact Rudy Kapichak at *Kapichak.Rudolph@epa.gov.* For transportation conformity questions, contact Aaron Letterly at *Letterly.Aaron@epa.gov.*

SUPPLEMENTARY INFORMATION: The contents of this notice are as follows:

I. General Information

A. Does this action apply to me?

Entities potentially impacted by the approval of MOVES4 are those that adopt, approve, or fund transportation plans, transportation improvement programs (TIPs), or projects as defined in 40 CFR 93.101 under title 23 U.S.C. or title 49 U.S.C. chapter 53 and those that develop and submit SIPs to EPA. Regulated categories and entities affected by today's action include:

Category	Examples of regulated entities
Local government	Local air quality and transportation agencies, including metropolitan planning organizations (MPOs).
State government	State air quality and transportation agencies.

Category	Examples of regulated entities
Federal government	Department of Transportation (Federal Highway Administration (FHWA) and Federal Transit Administration (FTA)).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the release of MOVES. Other entities not listed in the table could also be affected. To determine whether your organization is affected by this action, you should carefully examine the transportation conformity applicability requirements in 40 CFR 93.102. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How can I get copies of MOVES4 and other related information?

The official version of the MOVES4 model and supporting documentation are available on EPA's MOVES website: *www.epa.gov/moves.* Individuals who want to receive EPA announcements related to the MOVES4 model can subscribe to the EPA–MOBILENEWS email listserv, which can be done at EPA's website at: *www.epa.gov/moves/forms/epa-mobilenews-listserv.*

Available guidance on how to apply MOVES4 for SIPs and transportation conformity purposes can be found on EPA's transportation conformity website, *www.epa.gov/state-and-local-transportation/policy-and-technical-guidance-state-and-local-transportation,*[1] including ''MOVES4 Policy Guidance: Use of MOVES for State Implementation Plan Development, Transportation Conformity, General Conformity, and Other Purposes.'' (420–B–23–009, August 2023).

EPA will continue to update these websites as other MOVES support materials and guidance are developed or updated.

II. What is MOVES4?

MOVES4 is EPA's latest motor vehicle emissions model for state and local agencies to estimate volatile organic compounds (VOCs), nitrogen oxides (NO_X), particulate matter ($PM_{2.5}$ and PM_{10}), carbon monoxide (CO), and other pollutants and precursors from cars, trucks, buses, and motorcycles for SIP purposes and conformity determinations outside of California.[2] The model is based on analyses of millions of emission test results and considerable advances in the Agency's understanding of vehicle emissions. MOVES4 is a major revision to the MOVES series of models. This model is the fourth major MOVES release—the first three were MOVES2010, MOVES2014, and MOVES3.[3]

MOVES4 includes new regulations, features, and significant new data, as detailed in the MOVES4 technical reports. Notably, MOVES4 incorporates:

- The emission impacts of the EPA heavy-duty low NO_X rule for model years 2027 and later[4] and the light-duty greenhouse gas rule for model years 2023 and later.[5]
- The ability to model heavy-duty battery-electric and fuel-cell vehicles, as well as CNG long-haul combination trucks.
- Improved modeling of light-duty electric vehicles.
- New tools to make the model easier to use and updates for compatibility with newer software.
- Updated data and forecasts on vehicle populations (including electric vehicle fractions), travel activity, and emission rates, as well as updated fuel supply information at the county level.
- The latest data on ammonia emission rates for light-duty and heavy-duty vehicles.
- A number of limited-impact updates to specific emissions rates and adjustments.

Like its predecessors, MOVES4 includes the capability to estimate vehicle exhaust and evaporative emissions as well as brake wear and tire wear emissions for criteria pollutants and precursors. However, like previous versions, MOVES4 does not include the capability to estimate emissions of re-entrained road dust. To estimate emissions from re-entrained road dust, practitioners should continue to use the latest approved methodologies.[6]

The structure of MOVES4 is fundamentally the same as MOVES3, although there are new format options for some inputs, and the model run time may differ depending on the type of run and user inputs and computer configuration. As for emissions, EPA performed a comparison of MOVES4 to MOVES3 using default information in MOVES4 at the national level, and for three sample urban counties with different local travel patterns and ambient conditions. In general, compared to MOVES3, MOVES4 will produce notable decreases in NO_X for future years due to the emissions reductions of new regulations and small decreases in most other pollutants. However, ammonia emissions increase significantly because real-world emission measurements show ammonia emissions from both gasoline and diesel vehicles are much higher than MOVES3 predicted. Similarly, nitrous oxide (N_2O) emissions have increased due to new data for heavy-duty diesel vehicles. Note that results will vary based on the pollutant selected and that area's local inputs.

III. SIPs and MOVES4

EPA has articulated its policy regarding the use of MOVES4 in SIP development in its ''MOVES4 Policy Guidance: Use of MOVES for State Implementation Plan Development, Transportation Conformity, General Conformity, and Other Purposes'' (EPA–420–B–23–009, August 2023). Today's notice highlights certain aspects of the guidance, but state and local governments should refer to the guidance for more detailed information on how and when to use MOVES4 in reasonable further progress SIPs, attainment demonstrations, maintenance plans, inventory updates, and other SIP submissions.

MOVES4 should be used in ozone, CO, PM, and nitrogen dioxide (NO_2) SIP development as expeditiously as possible, as there is no grace period for the use of MOVES4 in SIPs. The Clean Air Act requires that SIP inventories and control measures be based on the most current information and applicable models that are available when a SIP is developed.[7] However, EPA also

[1] Interested parties can find these documents under the ''Emission Models and Conformity'' and ''Project-Level Conformity'' topics on this website.

[2] MOVES can also model emissions in the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Nonattainment and maintenance areas located in California use the latest approved version of the Emission FACtor (EMFAC) model.

[3] For more information, see EPA's *MOVES Versions in Limited Current Use* website.

[4] 88 FR 4296, January 24, 2023.

[5] 86 FR, December 30, 2021.

[6] See EPA's notice of availability, ''Official Release of the January 2011 AP–42 Method for Estimating Re-Entrained Road Dust from Paved Roads,'' published in the **Federal Register** on February 4, 2011 (76 FR 6328).

[7] See Clean Air Act section 172(c)(3). Also see the discussion of emissions inventory requirements in the ''Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements'' rule (81 FR 58029, August 24, 2016) and in the ''Implementation of the 2015 National Ambient Air Quality Standards for Ozone:

recognizes the time and level of effort that certain states may have already undertaken in SIP development using a version of MOVES3. States should consult with their EPA Regional Office if they have questions about how MOVES4 affects SIPs under development in specific nonattainment or maintenance areas. Early consultation can facilitate EPA's adequacy finding for SIP motor vehicle emissions budgets for transportation conformity purposes or EPA's SIP approval.

States should use the latest version of MOVES that is available at the time that a SIP is developed. All states other than California should use MOVES4 for SIPs that will be submitted in the future so that they are based on the most accurate estimates of emissions possible. However, state and local agencies that have already completed significant work on a SIP with a version of MOVES3 (*e.g.,* attainment modeling has already been completed with MOVES3) may continue to rely on this earlier version of MOVES. It would be unreasonable to require the states to revise these SIPs with MOVES4 since significant work has already occurred based on the latest information available at the time the SIP was developed, and EPA intends to act on these SIPs in a timely manner.

The Clean Air Act does not require states that have already submitted SIPs or will submit SIPs shortly after the release of a new model to revise these SIPs simply because a new motor vehicle emissions model is now available.[8] States can choose to use MOVES4 in these SIPs, for example, if it is determined that it is appropriate to update motor vehicle emissions budgets (''budgets'') with the model for future conformity determinations. However, as stated above, states should use MOVES4 where SIP development is in its initial stages or has not progressed far enough along that switching from a previous model version would create a significant adverse impact on state resources.

Incorporating MOVES4 into the SIP now could assist areas in mitigating possible transportation conformity difficulties in the future after the MOVES4 conformity grace period ends. New regional emissions analyses using EPA's emissions model that are started after the grace period is over must be based on MOVES4 (40 CFR 93.111), so having MOVES4-based SIP budgets in place at that time could provide more consistency with transportation conformity determinations.

IV. Transportation Conformity and MOVES4

In today's notice, EPA is announcing the availability of MOVES4 for use in transportation conformity analyses outside of California. EPA is also establishing a two-year grace period before MOVES4 will need to be used in regional emissions analysis for transportation conformity determinations and in hot-spot analyses for project-level transportation conformity determinations which use EPA's emissions model. The MOVES4 grace period for regional emissions and hot-spot analyses applies to the use of MOVES4 and any future minor revisions that occur during the grace period.

Transportation conformity is a Clean Air Act requirement to ensure that federally supported highway and transit activities are consistent with (''conform to'') the SIP. Conformity to a SIP means that a transportation activity will not cause or contribute to new air quality violations; worsen existing violations; or delay timely attainment of national ambient air quality standards or any interim milestones. Transportation conformity applies in nonattainment and maintenance areas for transportation-related pollutants: ozone, CO, $PM_{2.5}$, PM_{10} and NO_2. EPA's transportation conformity regulations (40 CFR parts 51.390 and 93 subpart A) describe how federally funded and approved highway and transit projects meet these statutory requirements.

The remainder of this section describes how the transportation conformity grace period was determined and summarizes how it will be implemented, including those circumstances when the grace period could be shorter than two years for regional emissions analyses. However, for complete explanations of how MOVES4 is to be implemented for transportation conformity, including details about using MOVES4 during the grace period, refer to ''MOVES4 Policy Guidance: Use of MOVES for State Implementation Plan Development, Transportation Conformity, General Conformity, and Other Purposes.'' (EPA–420–B–23–009).

A. Why is EPA establishing a two-year conformity grace period?

Section 176(c)(1) of the Clean Air Act states that ''. . .[t]he determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel, and congestion estimates. . .''. Additionally, the transportation conformity rule (40 CFR 93.111) requires conformity analyses to be based on ''the latest emissions estimation model available,'' and further states that this requirement is satisfied if the most current version of EPA's motor vehicle emissions model is used. When EPA announces a new emissions model, such as MOVES4, we establish a grace period before the model needs to be used for transportation conformity purposes (40 CFR 93.111(b)). In consultation with DOT, EPA must consider the degree of change in the emissions model and the effects of the new model on the transportation planning process (40 CFR 93.111(b)(2)). The transportation conformity rule provides that EPA will establish a grace period for new emissions models of between three and 24 months (40 CFR 93.111(b)(1)).

EPA articulated its intentions for establishing the length of a conformity grace period in the preamble to the 1993 transportation conformity rule (November 24, 1993; 58 FR 62211):

''EPA and DOT [the Department of Transportation] will consider extending the grace period if the effects of the new emissions model are so significant that previous SIP demonstrations of what emission levels are consistent with attainment would be substantially affected. In such cases, States should have an opportunity to revise their SIPs before MPOs must use the model's new emissions factors.''

In consultation with DOT, EPA considered the degree of change in MOVES4 and the effects of the new model on the transportation planning process (40 CFR 93.111(b)(2)). EPA considered the time it will take state and local transportation and air quality agencies to conduct and provide technical support for analyses. State and local agencies will need to become familiar with the MOVES4 emissions model and may need to convert existing data for use in MOVES4. Since 1993, the fundamental purpose of section 93.111(b) of the transportation conformity rule has been to provide a sufficient amount of time for MPOs and other state and local agencies to learn and employ new emissions models. The transition to a new emissions model for conformity involves more than learning to use the new model and preparing input data and model output. After model start-up is complete, state and local agencies also need to consider how the model affects regional emissions analysis results and whether SIP and/or transportation plan/TIP changes are

Nonattainment Area State Implementation Plan Requirements'' rule (83 FR 63022, December 6, 2018).

[8] *Sierra Club* v. *EPA,* 356 F.3d. 296, 308 (D.C. Cir. 2004) (''To require states to revise completed plans every time a new model is announced would lead to significant costs and potentially endless delays in the approval processes.'')

necessary to assure future conformity determinations.

The two-year conformity grace period also provides sufficient time for state and local agencies to learn and apply new technical guidance and training that reflect MOVES4. EPA is working to update guidance documents and training materials as quickly as possible. EPA will notify MOVES4 users when these important materials are available. Training materials will address different levels of state and local expertise.

In addition, many agencies will be implementing the transition to MOVES4 for PM and CO hot-spot analyses for applicable projects in those nonattainment and maintenance areas, with each analysis potentially involving multiple state and local agencies. States with CO hot-spot protocols that were previously approved into the SIP (40 CFR 93.123(a)(1)) that are based on a previous model will need time to revise them. Additional time is necessary to revise previously approved CO hot-spot protocols, and the SIP revision process and state requirements can vary. Finally, EPA considered the general time and monetary resource constraints in which state and local agencies currently operate. Upon considerations of all these factors, EPA is establishing a two-year grace period, which begins today and ends on September 12, 2025, before MOVES4 needs to be used for new transportation conformity analyses outside of California.

B. Circumstances When Grace Period Will Be Shorter Than Two Years

The grace period for regional emissions analyses will be shorter than two years for a given pollutant if an area revises its SIP and motor vehicle emissions budgets with MOVES4 and such budgets have been found adequate or approved into the SIP prior to the end of the two-year grace period. In this case, the new regional emissions analysis must use MOVES4 if the conformity determination is based on a MOVES4-based budget (40 CFR 93.111).

Areas that are designated nonattainment or maintenance for multiple pollutants may rely on both MOVES4 and MOVES3 to determine conformity for different pollutants during the grace period. For example, if an area revises a previously submitted (but not approved) MOVES3-based PM_{10} SIP with MOVES4 and EPA finds these revised MOVES4 budgets adequate for conformity, such budgets would apply for conformity on the effective date of the **Federal Register** notice announcing EPA's adequacy finding. In this example, if the area is nonattainment for PM_{10} and ozone, the MOVES4 grace period would end for PM_{10} regional emissions analyses once EPA found the new MOVES4-based SIP budgets adequate. However, MOVES3 could continue to be used for ozone-related regional emissions analyses begun before the end of the MOVES4 grace period.[9] In addition, the length of the grace period for hot-spot analyses would not be affected by an early submission of MOVES4-based budgets. In this example, the two-year grace period for PM_{10} hot-spot analyses would continue to apply even if the grace period is shortened for regional PM_{10} conformity analyses. EPA Regional Offices should be consulted for questions regarding such situations in multi-pollutant areas.

In addition, in most cases, if the state revises previously approved budgets based on an earlier EPA emissions model, the revised MOVES4 budgets could not be used for conformity purposes until EPA approves them, *i.e.,* approves the SIP revision. In general, submitted SIPs cannot supersede approved budgets until the submitted SIP is approved. See 40 CFR 93.118(e)(1).

However, 40 CFR 93.118(e)(1) allows an approved budget to be replaced by an adequate budget if EPA's approval of the initial budgets specifies that the budgets being approved may be replaced in the future by new adequate budgets. This flexibility has been used in limited situations in the past. In such cases, the MOVES4-based budgets would be used for conformity purposes once they have been found adequate, if requested by the state in its SIP submission and specified in EPA's SIP approval. States should consult with their EPA Regional Office to determine if this flexibility applies to their situation.

C. Use of MOVES4 for Regional Emissions Analyses During the Grace Period

During the conformity grace period, areas should use interagency consultation to examine how MOVES4 will impact their future transportation plan and TIP conformity determinations, including regional emissions analyses. Isolated rural areas should also consider how future regional emissions analyses will be affected when the MOVES4 grace period ends. Areas should carefully consider whether the SIP and budgets should be revised with MOVES4 or if transportation plans and TIPs should be revised before the end of the conformity grace period, since doing so may be necessary to ensure conformity in the future.

Finally, the transportation conformity rule provides flexibility for completing conformity determinations based on regional emissions analyses that use MOVES3 that are started before the end of the grace period. Regional emissions analyses that are started during the grace period can use either MOVES3 or MOVES4. The interagency consultation process should be used if it is unclear if a MOVES3-based analysis was begun before the end of the grace period. If there are questions about which model should be used in a conformity determination, the EPA Regional Office can be consulted.

When the grace period ends on September 12, 2025, MOVES4 will become the only EPA motor vehicle emissions model for regional emissions analyses for transportation conformity in states other than California. In general, this means that all new transportation plan and TIP conformity determinations started after the end of the grace period must be based on MOVES4, even if the SIP is based on MOVES3 or an older version of the MOVES model.

D. Use of MOVES4 for Project-Level Hot-Spot Analyses During the Conformity Grace Period

The MOVES4 grace period also applies to the use of MOVES4 for CO, PM_{10} and $PM_{2.5}$ hot-spot analyses. Sections 93.116 and 93.123 of the transportation conformity regulation contain the requirements for when a hot-spot analysis is required for project-level conformity determinations.[10] The transportation conformity rule provides flexibility for analyses that are started before the end of the grace period. A conformity determination for a transportation project may be based on a previous model if the analysis was begun before or during the grace period, and if the final environmental document for the project is issued no more than three years after the issuance of the draft environmental document (40 CFR 93.111(c)). Interagency consultation should be used if it is unclear if a

[9] In this example, such an area would use MOVES4 to develop a regional emissions analysis for PM_{10} for comparison to the revised MOVES4-based budgets (*e.g.,* PM_{10} budgets). The regional emissions analysis for ozone could be based on MOVES3 for the VOC and NO_X budgets in the ozone SIP for the remainder of the conformity grace period.

[10] In CO nonattainment and maintenance areas, a hot-spot analysis is required for all non-exempt projects, with quantitative hot-spot analyses being required for larger, congested intersections and other projects (40 CFR 93.123(a)(1)). In addition, in $PM_{2.5}$ and PM_{10} nonattainment and maintenance areas, the transportation conformity regulation requires that a quantitative hot-spot analysis be completed for certain projects (see 40 CFR 93.123(b)(1)).

previous analysis was begun before the end of the grace period. For CO, PM_{10} and $PM_{2.5}$ hot-spot analyses that start during the grace period, project sponsors can choose to use MOVES3 or MOVES4.

EPA encourages sponsors to use the consultation process to determine which option may be most appropriate for a given situation. Any new CO, PM_{10} or $PM_{2.5}$ hot-spot analyses for conformity purposes begun after the end of the grace period must be based on MOVES4. EPA has guidance on how to conduct quantitative $PM_{2.5}$ and PM_{10} hot-spot modeling for transportation conformity purposes, and on how to use MOVES for a CO hot-spot analysis. Until EPA updates these guidance documents, the MOVES3-based guidance still generally applies for MOVES4. See EPA's ''Project-level Conformity'' website, *www.epa.gov/state-and-local-transportation/project-level-conformity-and-hot-spot-analyses,* for the latest information and guidance documents on how to conduct CO, PM_{10} and $PM_{2.5}$ hot-spot modeling for transportation conformity purposes.

Any new, quantitative CO, PM_{10} or $PM_{2.5}$ hot-spot analysis for conformity purposes begun after the end of the grace period using EPA's emissions model must use MOVES4. The interagency consultation process should be used if it is unclear whether these conditions are met. For questions about which model should be used in a project-level conformity determination, consult with your EPA Regional Office.

E. FHWA's CO Categorical Hot-Spot Finding

FHWA released the most recent CO categorical hot-spot finding for intersection projects on January 31, 2023, that was based on MOVES3.[11] During the MOVES4 grace period, a project sponsor outside of California may continue to rely on the categorical finding for applicable projects that are determined through interagency consultation to be covered by the finding's parameters. However, new CO hot-spot analyses for conformity purposes begun after the end of the MOVES4 grace period would not be able to rely on the MOVES3-based January 2023 CO categorical hot-spot finding.

F. CO Hot-Spot Protocols That Were Previously Approved Into the SIP

Section 93.123(a)(1) of the transportation conformity regulation allows areas to develop alternate procedures for determining localized CO hot-spot analyses, when developed through interagency consultation and approved by the EPA Regional Administrator. Some states have chosen in the past to develop such procedures based on previous EPA emissions models.

During the MOVES4 grace period, areas with previously approved CO hot-spot protocols based on MOVES3 may continue to rely on these protocols. Once the MOVES4 two-year grace period ends, new CO hot-spot analyses for conformity purposes will need to be based on MOVES4. Previously approved SIP CO hot-spot protocols that are based on emissions models prior to MOVES3 can no longer be used for transportation conformity purposes.

Karl Simon,

Director, Transportation and Climate Division, Office of Transportation and Air Quality.

[FR Doc. 2023–19116 Filed 9–11–23; 8:45 am]

BILLING CODE 6560–50–P

[11] See *www.epa.gov/state-and-local-transportation/project-level-conformity-and-hot-spot-analyses#cohotspot.*

ENVIRONMENTAL PROTECTION AGENCY

EPA–HQ–OPP–2023–0070; FRL–10841–07–OCSPP]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients (July 2023)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before October 12, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2023–0070, through the *Federal eRulemaking Portal* at *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 instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Madison Le, Biopesticides and Pollution Prevention Division (BPPD) (7511M), main telephone number: (202) 566–1400, email address: *BPPDFRNotices@epa.gov.* The mailing address for each contact person is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products.

Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under EPA's public participation process for registration actions, there will be an additional opportunity for public comment on the proposed decisions. Please see EPA's public participation website for additional information on this process (*https://www.epa.gov/pesticide-registration/public-participation-process-registration-actions*).

Notice of Receipt—New Active Ingredients

File Symbol: 70506–AEN. *Docket ID number:* EPA–HQ–OPP–2023–0400. *Applicant:* UPL NA Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406. *Product name:* GAXY MUP. *Active ingredient:* Plant growth regulator—*Ascophyllum nodosum* concentrated extract at 99.52%. *Proposed use:* For manufacturing of plant growth regulator products. *Contact:* BPPD.

File Symbol: 70506–ARI. *Docket ID number:* EPA–HQ–OPP–2023–0400. *Applicant:* UPL NA, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406. *Product name:* BOVATO. *Active ingredient:* Plant growth regulator—*Ascophyllum nodosum* concentrated extract at 99.52%. *Proposed use:* For foliar and soil applications to agricultural crops. *Contact:* BPPD.

File Symbol: 70506–ARO. *Docket ID number:* EPA–HQ–OPP–2023–0400. *Applicant:* UPL NA, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406. *Product name:* GAXY. *Active ingredient:* Plant growth regulator—*Ascophyllum nodosum* concentrated extract at 99.52%. *Proposed use:* For foliar and soil applications to agricultural crops. *Contact:* BPPD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 5, 2023.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2023–19690 Filed 9–11–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Comment on an Exposure Draft Titled Management's Discussion and Analysis: Rescinding and Replacing SFFAS 15

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has released an exposure draft titled *Management's Discussion and Analysis: Rescinding and Replacing SFFAS 15.* Respondents are encouraged to comment on any part of the exposure draft.

DATES: Written comments are requested by December 7, 2023.

ADDRESSES: Written comments should be submitted via *https://gaosurvey.gao.gov/jfe/form/SV_6thq8SVhOJtNtWu* or sent to *fasab@fasab.gov.* Emails should be addressed to Monica R. Valentine, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street NW, Suite 1155, Washington, DC 20548. The exposure draft is available on the FASAB website at *https://www.fasab.gov/documents-for-comment/.* Copies can be obtained by contacting FASAB at (202) 512–7350.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

(Authority: 31 U.S.C. 3511(d); Federal Advisory Committee Act, 5 U.S.C. 1001–1014.)

Dated: September 7, 2023.

Monica R. Valentine,

Executive Director.

[FR Doc. 2023–19620 Filed 9–11–23; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 170186]

Privacy Act of 1974; Matching Program; Correction

AGENCY: Federal Communications Commission.

ACTION: Notice; correction.

SUMMARY: The Federal Communications Commission published a document in the **Federal Register** of August 29, 2023, concerning a new Matching Program. The document provided an incorrect effective date and ending date of a new matching agreement between the Federal Communications Commission and the Department of Health and Human Services, Centers for Medicare and Medicaid Services.

FOR FURTHER INFORMATION CONTACT: Lori Alexiou, (202) 418–2001, or *privacy@fcc.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of August 29, 2023, in FR Doc. 88–59523, on page 59523, in the third column, correct the **DATES** caption to read:

DATES: Written comments are due on or before September 28, 2023. This computer matching program will commence on October 15, 2023, and will conclude on April 14, 2025.

Dated: September 6, 2023.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2023–19613 Filed 9–11–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Senior Executive Service Performance Review Board

AGENCY: Federal Mediation and Conciliation Service (FMCS).

ACTION: Notice of senior executive service performance review board.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is issuing this notice to inform the public of the names of the members of the Agency's Senior Executive Service (SES) Performance Review Board.

DATES: This SES Performance Review Board is effective September 12, 2023.

FOR FURTHER INFORMATION CONTACT: Anna Davis, General Counsel, 202–606–3737, *ogc@fmcs.gov,* 250 E St. SW, Washington, DC 20427.

SUPPLEMENTARY INFORMATION: Sec. 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The members of FMCS's Performance Review Board are:

1. Adrienne Adger, Acting Human Resource

Director (Chair and non-voting member), Federal Mediation and Conciliation Service
2. Javier Ramirez, Deputy Director, Field Operations, Federal Mediation and Conciliation Service
3. Marla Hendrickkson, External Career SES member, Food and Drug Administration
4. Cynthia Washington, Director of Procurement, Federal Mediation and Conciliation Service
5. Beth Schindler, Associate Deputy Director, Field Operations, Regional, Federal Mediation and Conciliation Service

Dated: September 6, 2023.

Anna Davis,

General Counsel.

[FR Doc. 2023–19605 Filed 9–11–23; 8:45 am]

BILLING CODE 6732–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than September 27, 2023.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309; Comments can also be sent electronically to *Applications.Comments@atl.frb.org*:

1. *Smith & Hood Investments, L.L.C., WKH Holdings, LLC, Smith-Hoover Holdings, L.L.C., Amy Hood Conti, Savannah K. Conti, and Chad Tate, all of Amite, Louisiana; Nancy Hood Pray, Kenneth C. Pray, Betsy Kent Hood, and Steven Hoover, all of Hammond, Louisiana; MACSMITH, L.L.C., MacBrandon Industries, L.L.C., and Luiz Macedo, all of Ponchatoula, Louisiana; Thomas J. Hood, Fluker, Louisiana; Candace Hood Jenkins, Franklinton, Louisiana; and CAM2 Holding Company, L.L.C., Roseland, Louisiana;* to become members of an existing family control group, a group acting in concert to retain voting shares of First Guaranty Bancshares, Inc., and thereby indrectly retain voting shares of First Guaranty Bank, both of Hammond, Louisiana.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–19670 Filed 9–11–23; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2023–07; Docket No. 2023–0002; Sequence No. 27]

Revised Draft Environmental Impact Statement and Draft Finding of No Practicable Alternative for the Expansion and Modernization of the Raul Hector Castro Land Port of Entry and Proposed Commercial Land Port of Entry in Douglas, Arizona

AGENCY: Public Buildings Service (PBS), General Services Administration (GSA).

ACTION: Notice of availability, Finding of No Practicable Alternative (FONPA).

SUMMARY: This notice announces the availability of the revised Draft Environmental Impact Statement (DEIS), which examines the potential environmental impacts from the expansion and modernization of the Raul Hector Castro (RHC) Land Port of Entry (LPOE) in Douglas, Arizona and construction of a new Commercial LPOE to address various operational, capacity, and safety issues associated with the existing facility. Following issuance of the original DEIS in January 2023, GSA identified a third action alternative—Alternative 3—through internal scoping. Due to the change in the analysis, GSA is re-issuing a revised DEIS for public review during a 45-day comment period. The DEIS describes the purpose and need for the project; alternatives considered; the existing environment that could be affected; the potential impacts resulting from each of the alternatives; and proposed best management practices and/or mitigation measures. The revised DEIS also includes the revised Draft Finding of No Practicable Alternative (FONPA), which provides a floodplain assessment and statement of findings as a result of construction in a floodplain at the RHC LPOE.

DATES:

Public Comment Period—The Public Comment Period begins with publication of this NOA in the **Federal Register** and will last for 45 days until Monday, October 23, 2023. After the comment period, GSA will prepare the Final EIS.

Meeting Date—A public meeting will be held on Wednesday, September 27, 2023, from 4:00 p.m. to 6:00 p.m., Mountain Time. The meeting will be held in the Douglas Visitor Center, where interested parties are invited to join and provide verbal or written comments on the revised DEIS and Draft FONPA.

ADDRESSES:

Meeting Location—A public meeting will be held at the Douglas Visitor Center, 345 16th St., Douglas, AZ 85607.

Public Comments—In addition to verbal and written comments provided at the public meeting, members of the public may also submit comments by one of the following methods:

- *Email: Osmahn.Kadri@gsa.gov.* Please include '*RHC LPOE EIS*' in the subject line of the message.
- *Mail:* ATTN: Osmahn Kadri, RHC LPOE EIS; U.S. General Services Administration, c/o Potomac-Hudson Engineering, Inc., 77 Upper Rock Circle, Suite 302, Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Osmahn Kadri, NEPA Program Manager, GSA at 415–522–3617 or *Osmahn.Kadri@gsa.gov.* Please also call the number if special assistance is needed to attend and participate in the public meeting.

SUPPLEMENTARY INFORMATION:

Public Comment Period

The views and comments of the public are necessary in helping GSA in its decision-making process with impacts to environmental, cultural, and economic impacts. The meeting will be an informal open house, where visitors may speak with GSA representatives and provide written comments. No formal presentation will be provided. All comments received will be considered equally and will become part of the public record. Further information on the project, including an electronic copy of the revised DEIS, may also be found online at the following websites: *https://www.gsa.gov/about-us/*

regions/welcome-to-the-pacific-rim-region-9/land-ports-of-entry/douglas-commercial-land-port-of-entry and *https://www.gsa.gov/about-us/regions/welcome-to-the-pacific-rim-region-9/land-ports-of-entry/raul-hector-castro-land-port-of-entry.*

Serene Wetzel,

Director (Acting), Portfolio Management Division, Pacific Rim Region, Public Buildings Service.

[FR Doc. 2023–19611 Filed 9–11–23; 8:45 am]

BILLING CODE 6820–YF–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Injury Prevention and Control; Cancellation of Meeting

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, National Center for Injury Prevention and Control (BSC, NCIPC); September 20, 2023, first session from 1 p.m. to 2:30 p.m., EDT (OPEN), and second session from 2:30 p.m. to 4:30 p.m., EDT (CLOSED), in the original **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Christopher R. Harper, Ph.D., Designated Federal Officer, Board of Scientific Counselors, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway NE, Mailstop S–1069, Atlanta, Georgia 30341. Telephone: (404) 718–8330; Email: *ncipcbsc@cdc.gov.*

SUPPLEMENTARY INFORMATION: The virtual meeting was published in the **Federal Register** on July 31, 2023, 88 FR 49463–49464.

This meeting is being canceled in its entirety.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–19666 Filed 9–11–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended, and the Determination of the Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–OH–22–005, Commercial Fishing Occupational Safety Research Cooperative Agreement; and RFA–OH–22–006, Commercial Fishing Occupational Safety Training Project Grants.

Date: November 14, 2023.

Time: 1 p.m.–5 p.m., EST.

Place: Video-Assisted Meeting.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Dan Hartley, Ed.D., Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 1095 Willowdale Road, Morgantown, West Virginia 26505. Telephone: (304) 285–5812; Email: *DHartley@cdc.gov.*

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–19668 Filed 9–11–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10769]

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 November 13, 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–10769 Satisfaction of Nursing Homes, Hospitals, and Outpatient Clinicians Working with the CMS Network of Quality Improvement and Innovation Contractors Program (NQIIC)

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:* Revision of a currently approved information collection; *Title of Information Collection:* Satisfaction of Nursing Homes, Hospitals, and Outpatient Clinicians Working with the CMS Network of Quality Improvement and Innovation Contractors Program (NQIIC); *Use:* The purpose of this Information Collection Request (ICR) is to collect data to inform the program evaluation of the Centers for Medicare & Medicaid Services (CMS) Quality Innovation Network-Quality Improvement Organization (QIN–QIO) and Hospital Quality Improvement Contractors (HQIC) programs under the Network of Quality Improvement and Innovation Contractors (NQIIC) contract vehicle. This is a revision package. First, we updated the Nursing Home and Hospital Surveys to cover all the quality improvement focus areas targeted by NQIIC awardees, removed some but not all COVID–19 Public Health Emergency (PHE) related questions to reflect the progress of federal health program (*e.g.,* Agency for Healthcare Research and Quality Project Echo program was officially ended in August 2021), and made minor refinements based on the first round of survey fielding. Second, we added the Outpatient Clinician Survey in the same revision package since all three surveys are conducted under the same NQIIC contract.

This revision package supports evaluation of the technical assistance provided by the QINQIO Program to nursing homes and outpatient clinicians in community settings, and Hospital Quality Improvement Contractors (HQIC) Program activities to support hospitals. This ICR is part of a larger evaluation of the overall impact of the NQIIC Program. *Form Number:* CMS–10769 (OMB control number: 0938–1424); *Frequency:* Yearly; *Affected Public:* State and Private Sector (Business or other for-profits); *Number of Respondents:* 1,900; *Total Annual Responses:* 1,900; *Total Annual Hours:* 559. (For policy questions regarding this collection, contact Jeff Mokry at 214–767–4021.)

Dated: September 7, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–19603 Filed 9–11–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0579]

Mayya Tatsene: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) permanently debarring Mayya Tatsene 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 Ms. Tatsene was convicted of a felony under Federal law for conduct that relates to the regulation of any drug product under the FD&C Act. Ms. Tatsene was given notice of the proposed permanent debarment and was given an opportunity to request a hearing to show why she should not be debarred. As of July 8, 2023 (more than 30 days after receipt of the notice, as prescribed by regulation), Ms. Tatsene has not responded to the notice. Ms. Tatsene's failure to respond and request a hearing within the prescribed timeframe constitutes a waiver of her right to a hearing concerning this action.

DATES: This order is applicable September 12, 2023.

ADDRESSES: Any application by Ms. Tatsene 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 comments, 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–2023–N–0579. 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 January 10, 2023, Mayya Tatsene was convicted in the U. S. District Court for the Southern District of New York when the court entered judgment of conviction against her, after her plea of guilty, to one count of Conspiracy to Commit Wire Fraud in violation of 18 U.S.C. 1349 and one count of Wire Fraud in violation of 18 U.S.C. 1343.

The underlying facts supporting the conviction are contained in the Information, entered into the docket on May 29, 2019, and from the transcript of Ms. Tatsene's guilty plea hearing which occurred on May 29, 2019. Ms. Tatsene was an employee of AMA Laboratories (AMA), a consumer product testing company in Rockland County, New York. At AMA, Ms. Tatsene was employed as the clinical laboratory director and, between 2005 and 2017, was in charge of the Repeat Insult Patch Test laboratory at AMA. AMA purported to test the safety and efficacy of cosmetics, sunscreens, and other products on specified numbers of volunteer panelists in exchange for fees paid by consumer products companies. The customers who engaged AMA to run these tests on their products used the results to determine whether those products were safe and effective. From at least in or about 2005, through in or about April 2017, Ms. Tatsene and AMA personnel defrauded AMA's customers in excess of $25 million by testing products on materially lower numbers of panelists than the numbers specified and paid for by AMA's customers. Ms. Tatsene and other AMA employees made materially false and misleading statements about the results of the tests to AMA's customers. Specifically, Ms. Tatsene and other AMA employees falsely represented to AMA's customers that AMA had tested the products on the number of panelists specified by the laboratory's customers. Ms. Tatsene and other AMA employees sent its customers laboratory results containing false information via interstate email and facsimile communications.

Based on this conviction, FDA sent Ms. Tatsene by certified mail on May 25, 2023, a notice proposing to permanently debar her 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 Ms. Tatsene 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 Ms. Tatsene an opportunity to request a hearing, providing her 30 days from the date of receipt of the letter in which to file the request, and advised her that failure to 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. Ms. Tatsene received the proposal on June 8, 2023. She did not request a hearing within the timeframe prescribed by regulation and has, therefore, waived her opportunity for a hearing and any contentions concerning her debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(a)(2)(B) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Ms. Tatsene 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, Ms. Tatsene is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application, effective (see **DATES**) (see section 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 Ms. Tatsene during her 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 Ms. Tatsene provides services in any capacity to a person with an approved or pending drug product application during her period of debarment, she 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 Ms. Tatsene during her period of debarment, other than in connection with an audit under section 306 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: September 7, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–19672 Filed 9–11–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–3573]

Over-the-Counter Monograph Drug User Fee Program—OTC Monograph Order Requests Fee Rates for Fiscal Year 2024

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the over-the-counter (OTC) monograph order request (OMOR) fee rates under the OTC monograph drug user fee program (OMUFA) for fiscal year (FY) 2024. The Federal Food, Drug, and Cosmetic Act (FD&C Act) authorizes FDA to assess and collect user fees from qualifying manufacturers of OTC monograph drugs and submitters of OMORs. This notice publishes the OMOR fee rates under OMUFA for FY 2024. FDA plans to publish the FY 2024 OMUFA facility fee rates in a subsequent **Federal Register** notice (and anticipates its issuance will generally align with the timing of OMUFA facility fee rate publication for prior fiscal years).

DATES: These fees are effective on October 1, 2023, and will remain in effect through September 30, 2024.

FOR FURTHER INFORMATION CONTACT: Olufunmilayo Ariyo, Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., 6th Floor, Beltsville, MD 20705–4304, 240–402–4989; or the User Fees Support Staff at *OO-OFBAP-OFM-UFSS-Government@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 744M of the FD&C Act (21 U.S.C. 379j–72), authorizes FDA to assess and collect: (1) facility fees from qualifying owners of OTC monograph drug facilities and (2) fees from submitters of qualifying OTC monograph order requests. These fees are to support FDA's OTC monograph drug activities, which are detailed in section 744L(6) of the FD&C Act (21 U.S.C. 379j–71(6)) and include various FDA activities associated with OTC monograph drugs.[1]

For OMUFA purposes, an OTC monograph order request (OMOR) is a request for an administrative order, with respect to an OTC monograph drug, which is submitted under section 505G(b)(5) of the FD&C Act (see section 744L(7) of the FD&C Act). Given that OMOR fees are due on the date of submission of the OMOR,[2] the Agency is publishing the OMOR fee rates for FY 2024 in advance of the fiscal year to ensure that applicable OMOR fee rates are available in the event that OMORs are submitted early in the fiscal year.[3]

Under section 744M(a)(2)(A) of the FD&C Act, the Agency is authorized to assess and collect fees from submitters of OMORs, except for OMORs that request certain safety-related changes (as discussed below). There are two levels of OMOR fees, based on whether the OMOR at issue is a Tier 1 or Tier 2 OMOR.[4]

For FY 2024, the OMUFA fee rates are: Tier 1 OMOR fees ($537,471), Tier 2 OMOR fees ($107,494). These fees are effective for the period from October 1, 2023, through September 30, 2024. This document is issued pursuant to sections 744M(a)(4) and 744M(c)(4)(B) of the FD&C Act and describes the calculations used to set the OMUFA OMOR fees for FY 2024 in accordance with the directives in the statute.

II. Determination of FY 2024 OMOR Fees

Under OMUFA, the FY 2024 Tier 1 OMOR fee is $537,471 and the Tier 2 OMOR fee is $107,494, including an adjustment for inflation (see sections 744M(a)(2)(A)(i) and (ii) of the FD&C Act, respectively). OMOR fees are not included in the OMUFA target revenue calculation, which is based on the facility fees (see section 744M(b) of the FD&C Act).

An OMOR fee is generally assessed to each person who submits an OMOR (see section 744M(a)(2)(A) of the FD&C Act). OMOR fees are due on the date of the submission of the OMOR (see section 744M(a)(2)(B) of the FD&C Act). The payor should submit the OMOR fee that applies to the type of OMOR they are submitting (*i.e.,* Tier 1 or Tier 2). FDA will determine whether the appropriate OMOR fee has been submitted following receipt of the OMOR and the fee.

An OMOR fee will not be assessed if the OMOR seeks to make certain safety changes with respect to an OTC monograph drug. Specifically, no fee will be assessed if FDA finds that the OMOR seeks to change the drug facts labeling of an OTC monograph drug in a way that would add to or strengthen: (1) a contraindication, warning, or precaution; (2) a statement about risk associated with misuse or abuse; or (3) an instruction about dosage and administration that is intended to increase the safe use of the OTC monograph drug (see section 744M(a)(2)(C) of the FD&C Act).

III. OMOR Fee Adjustment for Inflation

Under OMUFA, the OMOR fee is adjusted for inflation for FY 2022 and each subsequent fiscal year (see section 744M(c)(1)(B) of the FD&C Act). That provision states that the dollar amount of the inflation adjustment to the fee for OMORs is equal to the product of the applicable fee for the preceding fiscal year and the inflation adjustment percentage.[5] For FY 2024, the inflation adjustment percentage is equal to the sum of

- (1) the average annual percent change in the cost, per full-time equivalent position of the FDA, of all personnel compensation and benefits paid with respect to such positions for the first 3 years of the preceding 4 fiscal years, multiplied by the proportion of personnel compensation and benefits costs to total costs of OTC monograph drug activities for the first 3 years of the preceding 4 fiscal years (see section 744M(c)(1)(C)(ii)(I) of the FD&C Act); and
- (2) the average annual percent change that occurred in the Consumer Price Index for urban consumers (Washington-Baltimore, DC–MD–VA–WV; Not Seasonally Adjusted; All items; Annual Index) for the first 3 years of the preceding 4 years of available data multiplied by the proportion of all costs

[1] For OMUFA purposes, an OTC monograph drug is a nonprescription drug without an approved new drug application that is governed by the provisions of section 505G of the FD&C Act (21 U.S.C. 355h) (see section 744L(5) of the FD&C Act);

[2] Section 744M(a)(2)(B) of the FD&C Act.

[3] The Agency anticipates a greater likelihood of OMOR submissions in FY 2024 compared to prior fiscal years.

[4] Under OMUFA, a Tier 1 OMOR is defined as any OMOR that is not a Tier 2 OMOR (see section 744L(8) of the FD&C Act). Tier 2 OMORs are detailed in section 744L(9) of the FD&C Act.

[5] See section 744M(c)(1)(C) of the FD&C Act.

other than personnel compensation and benefits costs to total costs of OTC monograph drug activities for the first 3 years of the preceding 4 fiscal years (see section 744M(c)(1)(C)(ii)(II) of the FD&C Act).

As a result of a geographical revision made by the Bureau of Labor and Statistics in January 2018, the ''Washington, DC-Baltimore'' index was discontinued and replaced with two separate indices (*i.e.,* the ''Washington-Arlington-Alexandria'' and ''Baltimore-Columbia-Towson'' indices). To continue applying a CPI that best reflects the geographic region in which FDA is located and that provides the most current data available, the ''Washington-Arlington-Alexandria'' index is used in calculating the inflation adjustment percentage.

Table 1 summarizes the actual cost and FTE data for the specified fiscal years, provides the percent changes from the previous fiscal years, and provides the average percent changes over the first 3 of the 4 fiscal years preceding FY 2024. The 3-year average is 3.9280 percent.

TABLE 1—FDA PERSONNEL COMPENSATION AND BENEFITS (PC&B) EACH YEAR AND PERCENT CHANGES

	2020	2021	2022	3-year average
Total PC&B	$2,875,592,000	$3,039,513,000	$3,165,477,000	
Total FTE	17,535	18,501	18,474	
PC&B per FTE	163,992	164,289	171,348	
Percent Change From Previous Year	7.3063	0.1811	4.2967	3.9280

Under the statute, this 3.9280 percent would be multiplied by the proportion of PC&B costs to the total FDA costs of OTC monograph drug activities for the first 3 years of the preceding 4 fiscal years (see section 744M(c)(1)(C)(ii) of the FD&C Act). Because OMUFA was first authorized beginning with FY 2021, FDA used cost data of OTC monograph drug activities for the preceding 3 fiscal years (*i.e.,* FYs 2021–2023) to align with OMUFA's authorization. Because final FY 2023 spending data (total FDA PC&B costs and OTC monograph drug activities cost) were unavailable at the time of this fee rate notice, the Agency estimated final FY 2023 costs by using actual plus planned FY 2023 spending on PC&B costs and actual plus planned FY 2023 spending on OTC monograph drug activities cost. The above approach reflects FDA's application of the OMUFA inflation adjustment in a manner that aligns with initiation of the OMUFA user fee program and the need to make FY 2024 OMOR fee rates available in a timely manner, so that these fees can be assessed to support OTC monograph drug activities pursuant to the statute.[6]

Table 2 shows the PC&B and the total obligations for OTC monograph drug activities for the last 3 fiscal years.

TABLE 2—PC&B AS A PERCENT OF TOTAL COST OF OTC MONOGRAPH DRUG ACTIVITIES

	2021	2022	2023*	3-year average
Total PC&B	$23,133,775.00	$25,415,237.00	$28,622,100.47	
Total Costs	35,030,659.00	49,644,273.00	56,038,274.22	
PC&B Percent	66.0387	51.1947	51.0760	56.1031

*FY 2023 actual plus planned FY 2023 spending on PC&B costs to the actual plus planned FY 2023 spending on OTC monograph drug activities cost.

The payroll adjustment is 3.9280 percent from table 1 multiplied by 56.1031 percent resulting in 2.2037 percent.

Table 3 provides the summary data for the percent changes in the specified CPI for the Washington-Arlington-Alexandria, DC–VA–MD–WV. The data are published by the Bureau of Labor Statistics on its website: *https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUURS35ASA0,CUUSS35ASA0.*

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN CPI FOR WASHINGTON-ARLINGTON-ALEXANDRIA, DC–VA–MD–WV AREA

Year	2020	2021	2022	3-year average
Annual CPI	267.16	277.73	296.12	
Annual Percent Change	0.8989	3.9568	6.6212	3.8256

The statute specifies that this 3.8256 percent be multiplied by the proportion of all costs other than PC&B to total costs of OTC monograph drug activities. Because 56.1031 percent was obligated for PC&B (as shown in table 2), 43.8969 percent is the portion of costs other than PC&B (100 percent minus 56.1031 percent equals 43.8969 percent). The non-payroll adjustment is 3.8256 percent times 43.8969 percent, or 1.6793 percent.

Next, we add the payroll adjustment (2.2037 percent) to the non-payroll adjustment (1.6793 percent), for a total inflation adjustment of 3.8830 percent (rounded) for FY 2024.

IV. OMOR Fee Calculations

Under section 744M(a)(2)(A) of the FD&C Act, each person that submits a

[6] Under section 744M(f)(1) of the FD&C Act, OMUFA fees are authorized to support OTC monograph drug activities. Although authority for OMUFA fees (and the accompanying OMUFA definition of ''OTC monograph drug activities'') was enacted on March 27, 2020, under the CARES Act, OMUFA's first authorized program year was FY 2021.

qualifying OMOR shall be subject to a fee for an OMOR. The amount of such fee shall be:

(1) For a Tier 1 OTC monograph order request, $500,000, adjusted for inflation for the fiscal year (see section 744M(c)(1)(B) of the FD&C Act); and

(2) For a Tier 2 OTC monograph order request, $100,000, adjusted for inflation for the fiscal year (see section 744M(c)(1)(B) of the FD&C Act).

In addition, under section 744M(c)(1)(B) of the FD&C Act and for purposes of section 744M(a)(2) of the FD&C Act, the dollar amount of the inflation adjustment to the fee for OMORs for FY 2022 and each subsequent fiscal year shall be equal to the product of:

(1) The applicable fee under section 744M(a)(2) of the FD&C Act for the preceding fiscal year; and

(2) The inflation adjustment percentage under section 744M(c)(1)(C) of the FD&C Act.

Thus, for FY 2024, the base of OMOR fees taken from the preceding fiscal year (*i.e.,* FY 2023) are: Tier 1: $517,381 and Tier 2: $103,476. The FY 2024 inflation adjustment percentage is: 3.8830%.

V. Fee Schedule

The fee rates for FY 2024 are displayed in Table 4.

TABLE 4—FEE SCHEDULE FOR FY 2024

Fee category	FY 2024 fee rates
OMOR:	
Tier 1	$537,471
Tier 2	107,494

VI. Fee Payment Options and Procedures

The new OMOR fee rates are for the period from October 1, 2023, through September 30, 2024. To pay the OMOR fees, complete an OTC Monograph User Fee Cover Sheet, available at: *https://userfees.fda.gov/OA_HTML/omufaCAcdLogin.jsp.*

A user fee identification (ID) number will be generated. Payment must be made in U.S. currency by electronic check or wire transfer, payable to the order of the Food and Drug Administration. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card for payments under $25,000 (Discover, VISA, MasterCard, American Express).

FDA has partnered with the U.S. Department of the Treasury to use *Pay.gov*, a web-based payment application, for online electronic payment. The *Pay.gov* feature is available on the FDA website after completing the OTC Monograph User Fee Cover Sheet and generating the user fee ID number. Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* (Note: Only full payments are accepted through *https://userfees.fda.gov/pay.* No partial payments can be made online). Once an invoice is located, ''Pay Now'' should be selected to be redirected to *Pay.gov*. Electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

For payments made by wire transfer, include the unique user fee ID number to ensure that the payment is applied to the correct fee(s). Without the unique user fee ID number, the payment may not be applied, which could result in FDA not filing an OMOR request, or other consequences of nonpayment. The originating financial institution may charge a wire transfer fee. Applicable wire transfer fees must be included with payment to ensure fees are fully paid. Questions about wire transfer fees should be addressed to the financial institution. The account information for wire transfers is as follows: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No.: 75060099, Routing No.: 021030004, SWIFT: FRNYUS33. If needed, FDA's tax identification number is 53–0196965.

Dated: September 6, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–19609 Filed 9–11–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Clinical, Treatment and Health Services Research Study Section.

Date: October 4, 2023.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Luis Espinoza, Ph.D., Scientific Review Officer, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2109, Bethesda, MD 20817, (301) 443–8599, *espinozala@mail.nih.gov*.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Fellowship Review Panel.

Date: October 24, 2023.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Luis Espinoza, Ph.D., Scientific Review Officer, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2109, Bethesda, MD 20817, (301) 443–8599, *espinozala@mail.nih.gov*.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Special Emphasis Panel for Member Conflict Applications.

Date: October 31, 2023.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Luis Espinoza, Ph.D., Scientific Review Officer, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2109, Bethesda, MD 20817, (301) 443–8599, *espinozala@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.273, Alcohol Research Programs, National Institutes of Health, HHS)

Dated: September 6, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–19564 Filed 9–11–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Clinical Trials: AD/ADRD.

Date: October 16, 2023.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Carmen Moten, Ph.D., MPH Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, RM: 2W200, Bethesda, MD 20892, 301 496–8589, *cmoten@mail.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Advancing Diversity in Aging Research.

Date: October 18, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Carmen Moten, Ph.D., MPH Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, RM: 2W200, Bethesda, MD 20892, 301 496–8589, *cmoten@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 6, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–19619 Filed 9–11–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; Understudied Proteins Associated with Rare Diseases (R03) Review.

Date: November 15, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Center for Advancing Translational Sciences, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Carol (Chang-Sook) Kim, Ph.D., Scientific Review Administrator, Office of Grants Management and Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, MD 20892, (301) 827–7940, *carolko@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: September 6, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–19563 Filed 9–11–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: Environmental Health Sciences P30 Core Centers (Conflict SEP).

Date: October 6, 2023.

Time: 10:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 984–287–3340, *worth@niehs.nih.gov*.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: Mechanism for Time-Sensitive Research Opportunities in Environmental Health Sciences (R21).

Date: October 11, 2023.

Time: 10:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Beverly W. Duncan, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Environmental Health Sciences, 530 Davis Drive, Room 3130, Durham, NC 27713, 240–353–6598, *beverly.duncan@nih.gov*.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: NRSA T32 Training Grants (Conflict SEP).

Date: October 26, 2023.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 984–287–3340, *worth@niehs.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk

Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 6, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–19624 Filed 9–11–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Grants Review Committee.

Date: October 19–20, 2023.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.

Contact Person: Thomas John O'Farrell, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Dental and Craniofacial Research, 6701 Democracy Blvd., Bethesda, MD 20892, 301–402–8559, *tom.ofarrell@nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: September 6, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–19562 Filed 9–11–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function A Study Section.

Date: October 3–4, 2023.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Ian Frederick Thorpe, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 903K, Bethesda, MD 20892, (301) 480–8662, *ian.thorpe@nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Language and Communication Study Section.

Date: October 5–6, 2023.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rochelle Francine Hentges, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000C, Bethesda, MD 20892, (301) 402–8720, *hentgesrf@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 6, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–19618 Filed 9–11–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Literature Selection Technical Review Committee.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend as well as those who need special assistance, such as sign language interpretation or other reasonable accommodations, must notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

The meeting is devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine and will be closed to the public in accordance with the provisions set forth in section 552b©(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: October 19–20, 2023.

Closed: October 19, 8:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, Room 4S412, 8600 Rockville Pike, Bethesda, MD 20892.

Open: October 19, 2023, 10:00 a.m. to 10:30 a.m.

Agenda: NLM Directors' Report.

Place: National Library of Medicine, Building 38, Room 4S412, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: October 19, 2023, 10:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, Room 4S412, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: October 20, 2023, 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, Room 4S412, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Dianne Babski, Associate Director, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301–827–4729, *babskid@mail.nih.gov*.

In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice at least 10 days in advance of the meeting.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *https://www.nlm.nih.gov/medline/medline_about_lstrc.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: September 6, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–19617 Filed 9–11–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings of the National Institute of Arthritis and Musculoskeletal and Skin Diseases.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group: Arthritis and Musculoskeletal and Skin Diseases Special Grants Study Section.

Date: October 19–20, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Helen Lin, Ph.D., Scientific Review Officer, NIH/NIAMS/RB, One Democracy Plaza, 6701 Democracy Blvd., Suite 800, Bethesda, MD 20817, 301–594–4952, *linh1@mail.nih.gov*.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group: Arthritis and Musculoskeletal and Skin Diseases Clinical Trials Study Section.

Date: October 26–27, 2023.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sushmita Purkayastha, Ph.D., Scientific Review Officer, NIH/NIAMS/RB, One Democracy Plaza, 6701 Democracy Blvd., Suite 814, Bethesda, MD 20817, *sushmita.purkayastha@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 6, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–19616 Filed 9–11–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Non-Pharmacological Clinical Trials.

Date: October 6, 2023.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20852, 301–500–5829, *serena.chu@nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: September 6, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–19566 Filed 9–11–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel: NIAMS NRSA Institutional Research Training Grant T32 Review Meeting.

Date: October 18, 2023.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Arthritis and Musculoskeletal and Skin Diseases, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sushmita Purkayastha, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of

Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 814, Bethesda, MD 20892, *sushmita.purkayastha@nih.gov*.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel: AMS/AMSC Member Conflict Review

Date: October 24, 2023.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications

Place: National Institute of Arthritis and Musculoskeletal and Skin Diseases, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kan Ma, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 814, Bethesda, MD 20892, 301–451–4838, *mak2@mail.nih.gov*.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel: P30 Resource-Based Core Review for Skin Biology and Skin Diseases.

Date: October 30–31, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Arthritis and Musculoskeletal and Skin Diseases, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kan Ma, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 814, Bethesda, MD 20892, 301–451–4838, *mak2@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 6, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–19623 Filed 9–11–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel Program Project.

Date: October 17, 2023.

Time: 11:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dario Dieguez, Ph.D., Scientific Review Officer, National Institute on Aging, Scientific Review Branch, Gateway Building, 7201 Wisconsin Avenue (2W218), Bethesda, MD 20892, (301) 827–3101, *dario.dieguez@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 6, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–19625 Filed 9–11–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2023–0021]

Commercial Customs Operations Advisory Committee (COAC)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: U.S. Customs and Border Protection (CBP) is revising the notice published in the **Federal Register** on August 30, 2023, which announced that the next meeting of the Commercial Customs Operations Advisory Committee (COAC) will be held on Wednesday, September 20, 2023. This notice revises the August 30, 2023 notice to reflect the addition of a new working group to the Secure Trade Lanes Subcommittee which will provide proposed recommendations for COAC's consideration at the September 20, 2023 COAC Public Meeting. As a result, CBP is republishing the August 30, 2023 notice, with amendments reflecting the addition of the De Minimis Working Group. The meeting will be open to the public via webinar only. There is no on-site, in-person option for the public to attend this quarterly meeting.

DATES: The COAC will meet on Wednesday, September 20, 2023, from 1 to 5 p.m. EDT. Please note that the meeting may close early if the committee has completed its business. Comments must be submitted in writing no later than September 15, 2023.

ADDRESSES: The meeting will be open to the public via webinar only. The webinar link and conference number will be posted by 5 p.m. EDT on September 19, 2023, at *https://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings.* For information or to request special assistance for the meeting, contact Ms. Latoria Martin, Office of Trade Relations, U.S. Customs and Border Protection, at (202) 344–1440 as soon as possible.

Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Search for Docket Number USCBP–2023–0021. To submit a comment, click the ''Comment'' button located on the top left-hand side of the docket page.
- *Email: tradeevents@cbp.dhs.gov.* Include Docket Number USCBP–2023–0021 in the subject line of the message.

Comments must be submitted in writing no later than September 15, 2023, and must be identified by Docket No. USCBP–2023–0021. All submissions received must also include the words ''Department of Homeland Security.'' All comments received will be posted without change to *https://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings* and *www.regulations.gov.* Therefore, please refrain from including any personal information you do not wish to be posted. You may wish to view the Privacy and Security Notice, which is available via a link on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Latoria Martin, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229, (202) 344–1440; or Ms. Felicia M. Pullam, Designated Federal Officer, at (202) 344–1440 or via email at *tradeevents@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: On August 30, 2023, U.S. Customs and Border Protection (CBP) published a notice in the **Federal Register** (88 FR 59933), announcing that the Commercial Customs Operations Advisory Committee (COAC) meeting will be held

on Wednesday, September 20, 2023. The August 30, 2023 notice complied with the 15-calendar-day requirement to provide the public with notice of the agenda and topics to be discussed. *See* section 102–3.150(a) of title 41 of the Code of Federal Regulations (41 CFR 102–3.150(a)). This notice amends the agenda published in the August 30, 2023 notice, to note the addition of a new working group, the De Minimis Working Group, to the Secure Trade Lanes Subcommittee. This notice is published less than 15 calendar days before COAC's public meeting. Pursuant to 41 CFR 102–3.150(b), CBP believes that there are exceptional circumstances warranting less-than-15-days' notice. Due to the recent creation of the De Minimis Working Group it was not clear its work would be developed sufficiently to present it at the public meeting. However, CBP has been informed that the subcommittee will have additional proposed recommendations to offer to COAC at the public meeting based on the work from the new working group. Because CBP considers the working group's activity to be of significant interest to the public and the government, CBP does not want to delay COAC's ability to deliberate publicly upon the additional proposed recommendations.

For ease of reference, CBP is republishing the entirety of the August 30, 2023 notice, with the changes described.

Notice of this meeting is given under the authority of the Federal Advisory Committee Act, Title 5 U.S.C. ch. 10. The Commercial Customs Operations Advisory Committee (COAC) provides advice to the Secretary of the Department of Homeland Security, the Secretary of the Department of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within the Department of Homeland Security and the Department of the Treasury.

The COAC is committed to ensuring that all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact Ms. Latoria Martin at (202) 344–1440 as soon as possible.

Please feel free to share this information with other interested members of your organization or association.

To facilitate public participation, we are inviting public comment on the issues the committee will consider prior to the formulation of recommendations as listed in the Agenda section below.

There will be multiple public comment periods held during the meeting on September 20, 2023. Speakers are requested to limit their comments to two minutes or less to facilitate greater participation. Please note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP web page: *https://www.cbp.gov/trade/stakeholder-engagement/coac.*

Agenda

The COAC will hear from the current subcommittees on the topics listed below:

1. The Intelligent Enforcement Subcommittee will provide updates on the work completed and topics discussed in its working groups. The Antidumping/Countervailing Duty (AD/CVD) Working Group will provide updates regarding its work and discussions on importer compliance with AD/CVD requirements. The Intellectual Property Rights (IPR) Process Modernization Working Group will report on and anticipates providing proposed recommendations for the committee's consideration relating to, the development of a portal on the CBP IPR web page and other enhancements in communications between CBP, rights holders, and the trade community regarding enforcement actions. The Bond Working Group will report on the ongoing discussions and status updates for eBond requirements. The Forced Labor Working Group (FLWG) has been working on the implementation of recommendations and updates, as well as revisions to its statement of work. The FLWG will also provide updates and anticipates making proposed recommendations for the committee's consideration at the September public meeting.

2. The Next Generation Facilitation Subcommittee will provide updates on its working groups. There will be an update and proposed recommendations for the committee's consideration from the Automated Commercial Environment (ACE) 2.0 Working Group regarding progress on the ACE 2.0 initiative resulting from the working group's recent in-person sessions held to review the CBP ACE 2.0 Concept of Operations processes. The Customs Interagency Industry Working Group (CII) (formerly the One U.S. Government Working Group) will provide an update on the work accomplished this quarter, which includes discussions with Partner Government Agencies and an update on ACE 2.0. The Passenger Air Operations (PAO) Working Group has been focusing its discussions on CBP security seal processing and access to international aircraft and passengers, landing rights, and elimination of outdated or obsolete forms, and will provide an update on those discussions.

3. The Rapid Response Subcommittee will provide updates from the Broker Modernization Working Group and the United States-Mexico-Canada Agreement (USMCA) Chapter 7 Working Group. The Broker Modernization Working Group currently meets monthly and continues to focus on the 19 CFR part 111 final rules relating to Modernization of the Customs Broker Regulations and Continuing Education for Licensed Customs Brokers, as well as Customs Broker Licensing Exams matters. The subcommittee anticipates the Broker Modernization Working Group will provide one proposed recommendation for the committee's consideration. The USMCA Chapter 7 Working Group meets bi-weekly with the expectation that proposed recommendations will be developed and submitted for consideration at an upcoming COAC public meeting. The current focus of this working group is to review the Chapter 7 articles of the USMCA and identify gaps in implementation between the United States, Mexico, and Canada.

4. The Secure Trade Lanes Subcommittee will provide updates on its six active working groups: the Export Modernization Working Group, the In-Bond Working Group, the Trade Partnership and Engagement Working Group, the Pipeline Working Group, and the Cross-Border Recognition Working Group and the newly formed De Minimis Working Group. The Export Modernization Working Group has continued its work on the electronic export manifest pilot program. The In-Bond Working Group has continued its focus on the implementation of previously submitted recommendations. The Trade Partnership and Engagement Working Group has focused its work on implementing previous recommendations for Customs Trade Partnership Against Terrorism (CTPAT) Trade Compliance partners and is working to update its statement of work to include CTPAT security. The Pipeline Working Group will submit proposed recommendations for the committee's consideration that CBP develop a pilot to use Distributed Ledger Technology to enhance transparency in supply chains for pipeline-borne goods. The De Minimis Working Group held their first meeting on August 22 and the group will submit proposed recommendations for the committee's consideration. Emerging risks have necessitated changes to

operational priorities. Therefore, the De Minimis Working Group met on an aggressive schedule to develop proposed recommendations for the September 20, 2023, COAC meeting. Although the Cross-Border Recognition Working Group did not meet this quarter, it remains an active working group within the subcommittee and will resume meetings next quarter.

Meeting materials will be available by September 11, 2023, at: *https://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings.*

Felicia M. Pullam,

Executive Director, Office of Trade Relations.

[FR Doc. 2023–19644 Filed 9–11–23; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Information Collection Request to Office of Management and Budget

AGENCY: Science and Technology Directorate (S&T), Department of Homeland Security (DHS).

ACTION: Sixty-Day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Department of Homeland Security (DHS) Science and Technology Directorate (S&T) intends to submit an Information Collection Requestion (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for the collection of information. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, S&T is inviting comments as described below.

DATES: Comments much reach S&T on or before October 30, 2023.

ADDRESSES: You may submit comments identified by DHS docket number DHS–2023–0031 SAFETY Act to S&T using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT:

DHS/S&T/COMPONENT: S&T/OIC/SAFETY Act.

Project Manager, Luz Irazabal.

Email Address, *luz.irazabal@hq.dhs.gov*.

Phone Number: 202–913–4926.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a S&T collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

S&T invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, S&T would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency.

In response to your comments, we may revise this ICR. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, DHS–2023–0031 SAFETY Act, and must be received by October 30, 2023.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Overview of This Information Collection Request

Title: Safety Act.

OMB Control Number: DHS–2023–0031 SAFETY Act.

Type of Information Collection: New.

Agency form number, if any, and the applicable component of the DHS sponsoring the collection: DHS–2023–0031 SAFETY Act, Science and Technology Directorate, Department of Homeland Security.

Respondents: Individuals.

Total Estimated Number of Respondents: An estimated 330 respondents will take the survey.

Total Estimated Burden Time: 18,500 hours.

Frequency: Once.

Obligation to Respond: Voluntary.

Summary: S&T's mission is to deliver effective and innovative insight, methods, and solutions for the critical needs of the Homeland Security Enterprise. As the research and development (R&D) arm of the Department of Homeland Security (DHS), the Science and Technology Directorate (S&T) focuses on providing the tools, technologies, and knowledge products the nation's Homeland Security Enterprise needs today and tomorrow. S&T constantly works to bridge industry and end-user communities around the nation. S&T's R&D focus areas cover DHS's core mission areas and use our network of industry, national laboratory and other partners seek solutions for capability gaps and define topics for future research. In order to work continuously to ensure that our programs are effective and meet our customers' needs, S&T seeks to obtain Office of Management and Budget approval of a generic clearance to collect qualitative feedback on our service delivery. By qualitative feedback, we mean, information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This collection of information is necessary to enable the S&T programs to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving tools,

technologies, services and knowledge products. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with our programs. This feedback will provide insights into customer or stakeholder perceptions, experiences, and expectations, provide an early warning of issues with products or service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between S&T and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector.

There is no cost to participants.

Gregg Piermarini,

Chief Information Officer, Science and Technology Directorate, Department of Homeland Security.

[FR Doc. 2023–19622 Filed 9–11–23; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0157]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Online Request To Be a Supporter and Declaration of Financial Support

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until November 13, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0157 in the body of the letter, the agency name and Docket ID USCIS–2023–0004. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2023–0004.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Background

This notice seeks comment on the USCIS Form I–134A information collection package, which DHS uses in connection with certain parole processes. In January 2023, at DHS's request, the Office of Management and Budget approved this new collection in accordance with emergency procedures set forth at 5 CFR 1320.13. DHS uses this collection to implement processes through which nationals of certain countries and their immediate family members may request to come to the United States in a safe and orderly way. The collection is an outgrowth of USCIS Form I–134 (OMB Control Number 1615–0014), and has been used in connection with Uniting for Ukraine; a new parole process for certain Cubans,[1] Haitians,[2] and Nicaraguans,[3] and Venezuelans; [4] new family reunification parole processes for certain Colombians,[5] Salvadorans,[6] Guatemalans,[7] and Hondurans; [8] and procedural changes to the previously established Cuban [9] and Haitian [10] Family Reunification Parole processes. The emergency processing activities associated with implementing these processes were necessary for multiple reasons, including to address the urgent humanitarian events transpiring in Ukraine, to prevent complications for the United States' ongoing efforts to engage hemispheric partners to increase their efforts to collaboratively manage and reduce irregular migration that could have arisen without timely action by the United States, and to avoid incentivizing irregular migration during a public comment period.

Under these processes, certain beneficiaries who are outside the United States and lack U.S. entry documents may be considered, on a case-by-case basis, for advance authorization to travel and a temporary period of parole for urgent humanitarian reasons or significant public benefit. To participate, eligible beneficiaries must:

- Have a supporter in the United States;
- Undergo and clear robust security vetting;
- Meet other eligibility criteria; and
- Warrant a favorable exercise of discretion.

Individuals participating in these processes must have a supporter in the United States who agrees to provide them with financial support for the duration of their parole in the United States. Prospective supporters submit a Form I–134A for each proposed parolee (beneficiary), including, if applicable, derivatives of the principal beneficiary, with USCIS through the USCIS online web portal to initiate the special parole or parole under the family reunification process. Form I–134A identifies and collects information on both the supporter and the beneficiary. The supporter must submit evidence establishing their income and assets and commit to provide financial support to the beneficiary for the duration of parole. A supporter filing under a family reunification parole process is also required to submit evidence establishing the family relationships between the principal beneficiary and all derivative beneficiaries. No fee is required to file Form I–134A. USCIS will perform background checks on the supporter and verify their financial information to ensure that the supporter is able to financially support the beneficiary. If the supporter's Form I–134A is confirmed, the beneficiary named in the Form I–134A will receive an email from

[1] 88 FR 1266 (Jan. 9, 2023); *see also* 88 FR 26329 (Apr. 28, 2023).

[2] 88 FR 1243 (Jan. 9, 2023); *see also* 26 FR 327 (Apr. 28, 2023).

[3] 88 FR 1255 (Jan. 9, 2023).

[4] 87 FR 63507 (Oct. 19, 2022); *see also* 88 FR 1279 (Jan. 9, 2023).

[5] 88 FR 43591 (July 10, 2023).

[6] 88 FR 43611 (July 10, 2023).

[7] 88 FR 43581 (July 10, 2023).

[8] 88 FR 43601 (July 10, 2023).

[9] 88 FR 54639 (Aug. 11, 2023).

[10] 88 FR 54635 (Aug. 11, 2023).

USCIS with instructions to create a USCIS online account and next steps for completing the request. See Advance Travel Authorization (ATA) (OMB Control Number 1651–0143) for the approved collection of information for the next steps in affected parole processes.

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 USCIS–2023–0004 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 should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Online Request to be a Supporter and Declaration of Financial Support.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–134A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses Form I–134A to determine whether a U.S.-based individual has sufficient financial resources and access to those funds to support the beneficiary named on the Form I–134A for the duration of their temporary stay in the United States, as well as to obtain information concerning whether the beneficiary merits a favorable exercise of discretion under the statutory parole standard.

Form I–134A is filed by a U.S.-based individual (the potential supporter) to request to be a supporter, agree to provide financial support to the beneficiary named on the form during the beneficiary's period of stay in the United States, and to provide information concerning why the beneficiary warrants a discretionary grant of parole.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–134A is 1,202,000, and the estimated hour burden per response is 2.11 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 2,536,220 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0.00.

USCIS specifically requests comments on the agency's estimate of the number of respondents who will submit Form I–134A, on average, in a given 12-month period. USCIS has added to the burden estimate for this collection, to account for any potential expansion(s) that align with new or revised policies or processing capacity over the next three years. USCIS also notes that the number of requests to be a supporter that USCIS is currently receiving exceeds our initial estimates. Anecdotal evidence indicates that supporters are submitting multiple, duplicate requests for the same beneficiary. USCIS welcomes public input on why supporters are creating duplicate requests to inform our estimates.

Dated: September 7, 2023.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023–19648 Filed 9–11–23; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0013]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for Travel Document

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until November 13, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0013 in the body of the letter, the agency name and Docket ID USCIS–2007–0045. Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0045.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status

Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments:

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0045 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension, without change, of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Travel Document.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–131; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Certain aliens, principally lawful permanent residents, conditional permanent residents, refugees, asylees, applicants for adjustment of status, noncitizens with pending Temporary Protected Status (TPS) applications and granted TPS, eligible recipients of Deferred Action for Childhood Arrivals (DACA), noncitizens inside the United States seeking an Advance Parole Document, noncitizens outside the United States seeking an Advance Parole Document, and CNMI long-term residents seeking Advance Permission to Travel to allow them to travel to the United States and lawfully enter or reenter the United States. U.S. citizens and lawful permanent residents will no longer utilize Form I–131 to request parole for their eligible family members under the Cuban Family Reunification Parole (CFRP) or Haitian Family Reunification Parole (HFRP) processes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–131 (paper) is 467,203 and the estimated hour burden per response is 1.7 hours; the estimated total number of respondents for the information collection Form I–131 (online) is 16,667 and the estimated hour burden per response is 1.65 hours; the estimated total number of respondents for biometrics processing is 84,000 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for passport-style photos is 380,000 and the estimated hour burden per response is 0.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,110,026 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $146,057,780.

Dated: September 07, 2023.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023–19671 Filed 9–11–23; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7075–N–11]

60-Day Notice of Proposed Information Collection: Training and Technical Assistance (TTA) Surveys, OMB Control No.: 2528–0325

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* November 13, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be submitted within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting, ''Currently under 60-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Anna Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000 or email at *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Anna Guido, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna Guido at *Anna.P.Guido@hud.gov,* telephone 202–402–5535 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is

seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Training and Technical Assistance (TTA) Surveys.

OMB Approval Number: 2528–0325.

Type of Request: Revision of a currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: The surveys in this collection of information are necessary to systematically gather user feedback and outcomes data to evaluate and improve HUD's deployment and management of its Training and Technical Assistance (TTA) resources. This type of outcomes data has been consistently requested by both the Office of Management and Budget (OMB) and Congressional Appropriations Committee staff. Technical assistance and training outcomes measurement and evaluation is authorized under Sec. 501 of Title V of the HUD Act of 1970. The surveys are voluntary on the part of respondents.

Members of affected public: TA Recipients and TA Providers.

Estimated Number of Respondents: 13,558 yearly (estimated).

Estimated Time per Response: 10–15 minutes.

Frequency of Response: 1.1 (some recipients may receive multiple surveys from participating in multiple engagements).

Estimated Total Annual Burden Hours: 2,837 (13,558 surveys × 10–15 minutes).

Estimated Total Annual Cost: The only cost to respondents is that of their time. The total estimated cost to HUD in FY 2023 is $85,664.89.

Legal Authority: The survey is conducted under Sec. 501 of Title V of the HUD Act of 1970.

Information collection	Number of respondents [1]	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
TA Survey for TA Provider	1,140	[2] 1.1	1,254	0.25	313.5	[3] $47.20	$14,797.20
TA Survey for Recipient	1,140	[4] 1.1	1,254	0.25	313.5	[5] 33.11	10,379.99
Survey for In-Person Training	3,500	[6] 1.3	4,550	0.2	910	[7] 27.37	24,906.70
Survey for Online Training	5,000	[8] 1.3	6,500	0.2	1,300	[9] 27.37	35,581.00
Totals	10,780		13,558		2,837		85,664.89

[1] Number of respondents is based on the frequency of TA and training engagements and the number of participants in recent years.
[2] HUD anticipates that some TA providers will provide multiple TA engagements and be asked to complete two surveys.
[3] Hourly rate from GS–13–01 Schedule for ''Rest of the U.S.'' as of January 2023.
[4] HUD anticipates that some TA recipients will receive multiple TA engagements and be asked to complete two surveys.
[5] Hourly rate from GS–11–01 Schedule for ''Rest of the U.S.'' as of January 2023.
[6] HUD anticipates that roughly 30% of in person trainees will complete multiple trainings and be asked to complete more than one survey.
[7] Hourly rate from GS–09–01 Schedule for ''Rest of the U.S.'' as of January 2023.
[8] HUD anticipates that roughly 30% of online trainees will complete multiple trainings and be asked to complete more than one survey.
[9] Hourly rate from GS–09–01 Schedule for ''Rest of the U.S.'' as of January 2023.

Respondent's Obligation: Participation is voluntary.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected, and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Todd M. Richardson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2023–19606 Filed 9–11–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_WY_FRN_MO4500172084; WYW–181596, WYW–189498, WYW–189521]

Notice of Realty Action: Classification for Lease and/or Conveyance for Recreation and Public Purposes of Public Lands in Teton County, Wyoming

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM), Pinedale Field Office, received an application from Teton County, Wyoming, for lease or conveyance of 36.26 acres comprised of three public land parcels (referred to as Map Parcels 13, 14, and 26) located along the Snake River under the authority of the Recreation and Public Purposes Act (RPPA) as amended, to support the County's development of recreational facilities that will help meet existing and future expanding recreational needs in Teton County. The BLM examined the public land and determined that the parcels are suitable for classification for lease and subsequent conveyance under the provisions of the RPPA, as amended.

DATES: Interested parties may submit written comments regarding the proposed classification for lease and conveyance of the land until October 27, 2023.

ADDRESSES: Mail written comments for the Teton County action to the BLM Pinedale Field Office, Field Manager, P.O. Box 768, 1625 West Pine Street, Pinedale, WY 82941 or via email to *blm_wy_Pinedale_wymail@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Tracy Hoover at the Pinedale address, by telephone at (307) 367–5342, or by email at *thoover@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: The RPPA allows the BLM to lease or convey public lands to local governments for development of recreation facilities or other public purposes if the identified lands are not needed for any Federal purpose and the lease or conveyance are consistent with approved BLM land use plans. The Teton County parcels (Map Parcels 13 and 14, and 26) are located along the Snake River near Jackson, Wyoming, and are legally described as:

Sixth Meridian, Wyoming

T. 41 N., R. 117 W.,
Tracts 51A and 52A.
T. 40 N., R. 116 W.,
Sec. 34, lot 15.

The area described contains approximately 36.26 acres in Teton County, Wyoming.

Map Parcel 13, which consists of 10.94 acres, is currently authorized under a right-of-way, but facilities are not built yet. The proposed facilities are access roads, vehicle parking, recreation trails, boat ramp, and a wildlife migration corridor. The wildlife migration corridor involves coordination with Wyoming Department of Transportation (WYDOT) reconstruction of Highway 22. Map Parcel 13 would be completely developed within 5 years.

Map Parcel 14, which consists of 6.47 acres, is currently authorized under a right-of-way to build the current recreation facilities. Existing facilities on the parcel include a non-motorized pathway, recreational trails, vehicle parking, and access roads. A third (36%) of the parcel is currently encumbered by a highway and a utility right-of-way.

Map Parcel 26, which consists of 18.85 acres, is currently authorized under a right-of-way to build the current recreation facilities. Existing facilities on the parcel include vehicle circulation and parking areas, pedestrian and cyclist routes, park lawn, landscaping and irrigation, picnic shelters, park playground, public restroom facilities, kiosks, and a concrete plant ramp. Currently, the western portion is being utilized by WYDOT for a staging area for reconstruction of Highway 189/191. Teton County and WYDOT have an agreement for WYDOT to install an underpass pedestrian and vehicle tunnel. The western area will be developed once WYDOT has completed the highway project.

A map showing these parcels and additional detailed information pertaining to the environmental analysis, plan of development and site plan is available for review at the BLM Pinedale Field Office address in the **ADDRESSES** Section and at the BLM's ePlanning site at *https://eplanning.blm.gov/eplanning-ui/project/2015655/510.*

The proposed RPPA lease and subsequent conveyance is consistent with the BLM Snake River Resource Management Plan dated April 5, 2004. The lease and conveyance documents, if issued, would be subject to the provisions of the RPPA, including a reversionary clause and the following conditions:

1. a right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);

2. all minerals, together with the right to prospect for, mine, and remove such deposits for the same under applicable law and such regulations as the Secretary of the Interior may prescribe;

3. terms or conditions required by law (including, but not limited to, any terms or conditions required by 43 CFR 2741.4, and as deemed necessary or appropriate by the Authorized Officer);

4. an appropriate indemnification clause protecting the United States from claims arising out of the lessee's/patentee's use, occupancy, or operations on the leased/patented lands; and

5. subject to valid existing rights.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from all other forms of appropriation under the public land laws, including the mining laws, except for lease and conveyance under the RPPA, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws.

Interested parties may submit written comments regarding the specific use proposed in the applications, plans of development, site plans, and whether the BLM followed proper administrative procedures in reaching the decision to lease and convey under the RPPA. Comments may also address the suitability for classification of the lands for recreational facilities in Teton County and whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

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. Only written comments submitted to the Field Manager, BLM Pinedale Field Office, will be considered properly filed. Any adverse comments will be considered protests and will be reviewed by the BLM Wyoming State Director, who may sustain, vacate, or modify this realty action.

In the absence of any adverse comments, the decision will become effective on November 13, 2023. The lands will not be available for lease and conveyance until after the decision becomes effective.

(Authority: 43 CFR 2741.5.)

Andrew Archuleta,

Wyoming State Director.

[FR Doc. 2023–19636 Filed 9–11–23; 8:45 am]

BILLING CODE 4331–26–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_MT_FRN_MO# 4500173324]

Notice of Western Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Western Montana Resource Advisory Council (Council) will meet as follows.

DATES: The Council will participate in a field tour on October 2 and host a business meeting on October 3, 2023. A virtual participation option will be available. The field tour and business meeting will start at 9 a.m. Mountain Time (MT) and conclude at 4 p.m. MT. The meeting and field tour are open to the public.

ADDRESSES: The October 2 field tour will commence and conclude at the Dillon Field Office located at 1005 Selway Dr., Dillon, MT 59725, and the meeting will be held at the same location. Individuals who prefer to participate virtually in the meeting must register in advance. Registration information will be posted 2 weeks in advance of the meeting on the Council's web page at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/montana-dakotas/western-montana-rac.*

Written comments for the Council may be sent electronically in advance of

the scheduled meeting to Public Affairs Specialist David Abrams at *dabrams@blm.gov,* or in writing to BLM, Western Montana District/Public Affairs, 101 N Parkmont, Butte, MT 59701. All comments will be provided to the Council.

FOR FURTHER INFORMATION CONTACT: David Abrams, BLM Western Montana District Office, telephone: (406) 437–2562, email: *dabrams@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mr. Abrams. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Council provides recommendations to the Secretary of the Interior concerning the planning and management of the public land resources located within the BLM's Western Montana District. The Council will participate in a field tour on October 2 to public land sites within the Council's purview. Members of the public are welcome on field tours but must provide their own transportation and meals. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM (see **FOR FURTHER INFORMATION CONTACT**) at least 2 weeks in advance. Agenda topics for the October 3 meeting include updates and discussion on Restoration Landscape projects and funding from the Missoula and Dillon Field Offices; recreation fee proposals and increases; and other resource management issues the Council may raise. The final agenda will be published with the news release confirming the meeting details 2 weeks before the meeting.

A public comment period will be offered October 3 at 3:30 p.m. MT. Depending on the number of persons wishing to speak and the time available, the amount of time for oral comments may be limited.

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. While the field tour and business meeting are scheduled from 9 a.m. to 4 p.m., they may end earlier or later depending on the needs of group members. Therefore, members of the public interested in a specific agenda item or discussion at the October 3 meeting should schedule their arrival accordingly.

Detailed minutes for Council meetings will be maintained in the BLM Western Montana District Office. Minutes will also be posted to the Council's web page at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/montana-dakotas/western-montana-rac.*

Authority: 43 CFR 1784.4–2.

Kathryn A. Stevens,

BLM Western Montana BLM District Manager.

[FR Doc. 2023–19676 Filed 9–11–23; 8:45 am]

BILLING CODE 4331–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_ES_FRN_MO4500171869]

Notice of Filing of Plat of Survey; Florida

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plat of survey of the following described lands is scheduled to be officially filed in the Bureau of land Management (BLM), Eastern States Office, Falls Church, Virginia, 30 days from the date of this publication. The survey, executed at the request of the Southeastern States District Office, BLM—Eastern States, is required for the management of these lands.

DATES: Unless there are protests of this action, the filing of the plat described in this notice will happen 30 days after publication of this notice in the **Federal Register**.

ADDRESSES: Written notices protesting the survey must be sent to the State Director, BLM Eastern States, 5275 Leesburg Pike, Falls Church, Virginia 22041.

FOR FURTHER INFORMATION CONTACT: Frank D. Radford, Chief Cadastral Surveyor for Eastern States; (703) 558–7759; email: *fradford@blm.gov;* or U.S. Postal Service: BLM–ES, 5275 Leesburg Pike, Suite 102A, Falls Church, Virginia 22041. Attn: Cadastral Survey. Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The service is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

Tallahassee Meridian, Florida

The dependent resurvey of a portion of the subdivisional lines and the survey of the meanders of the Lagrange Bayou in Lot 8 of Section 27, Township 1 South, Range 19 West.

A person or party who wishes to protest a survey must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A notice of protest is considered filed on the date it is received by the State Director for Eastern States during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. Any notice of protest filed after the scheduled date of official filing will be untimely and will not be considered. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed. If a notice of protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the next business day after all protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your notice of protest or statement of reasons, please be aware that your entire protest, 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.

A copy of the described plats will be placed in the open files, and available to the public, as a matter of information.

Authority: 43 U.S.C. chapter 3.

Frank D. Radford,

Chief Cadastral Surveyor for Eastern States.

[FR Doc. 2023–19664 Filed 9–11–23; 8:45 am]

BILLING CODE 4331–18–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLHQ320000.L13300000.EN0000; OMB Control No. 1004–0201]

Agency Information Collection Activities; Oil Shale Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before November 13, 2023.

ADDRESSES: Send your written comments on this information collection request (ICR) by mail to Darrin King, Information Collection Clearance Officer, U.S. Department of the Interior, Bureau of Land Management, Attention PRA Office, 440 W 200 S #500, Salt Lake City, UT 84101; or by email to *BLM_HQ_PRA_Comments@blm.gov.* Please reference Office of Management and Budget (OMB) Control Number 1004–0201 in the subject line of your comments. Please note that the electronic submission of comments is recommended.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Sabry Hanna by email at *shanna@blm.gov,* or by telephone at (571) 458–6644. 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. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor, and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other 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.

Abstract: This OMB control number applies to the exploration, development, and utilization of oil shale resources on the BLM-managed public lands. Currently, the only oil shale leases issued by the BLM are research, development, and demonstration (RD&D) leases. However, the BLM regulations provide a framework for commercial oil shale leasing and additionally include provisions for conversion of RD&D leases to commercial leases. Section 369 of the Energy Policy Act (42 U.S.C. 15927) addresses oil shale development and authorizes the Secretary of the Interior to establish regulations for a commercial leasing program for oil shale. The Mineral Leasing Act of 1920 (30 U.S.C. 241(a)) provides the authority for the BLM to allow for the exploration, development, and utilization of oil shale resources on the BLM-managed public lands. Additional statutory authorities for the oil shale program are: (1) The Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351–359); and (2) The Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1701 *et seq.,* including 43 U.S.C. 1732). OMB Control Number 1004–0201 is currently scheduled to expire on June 30, 2024. The BLM plans to request that OMB renew this OMB control number for an additional three (3) years.

Title of Collection: Oil Shale Management (43 CFR parts 3900, 3910, 3920, and 3930).

OMB Control Number: 1004–0201.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Applicants for oil shale leases, oil shale lessees and oil shale operators.

Total Estimated Number of Annual Respondents: 2.

Total Estimated Number of Annual Responses: 24.

Estimated Completion Time per Response: Varies from the number of minutes/hours per response.

Total Estimated Number of Annual Burden Hours: 1,795.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $526,667.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Darrin A. King,

Information Collection Clearance Officer.

[FR Doc. 2023–19660 Filed 9–11–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036527; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: David A. Fredrickson Archaeological Collections Facility at Sonoma State University, Rohnert Park, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the David A. Fredrickson Archaeological Collections Facility at Sonoma State University 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 Sutter County, CA.

DATES: Repatriation of the cultural item in this notice may occur on or after October 12, 2023.

ADDRESSES: Doshia Dodd, David A. Fredrickson Archaeological Collections Facility at Sonoma State University, 1801 East Cotati Avenue, Building 29, Rohnert Park, CA 94928, telephone (530) 514–8472, email *caradine@sonoma.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 David A. Fredrickson Archaeological Collections Facility at Sonoma State University. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the David A. Fredrickson Archaeological Collections Facility at Sonoma State University.

Description

One cultural item (Accession Number 91–29) was removed from archeological site CA–SUT–17 in Sutter County, CA, in 1991. The object of cultural patrimony is one lot consisting of flaked stone tools and debitage; faunal bone tools; groundstone objects; shell beads; and unmodified faunal bones and shells.

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: anthropological, archeological, geographical, historical, and expert opinion in the form of Tribal Traditional Knowledge.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the David A. Fredrickson Archaeological Collections Facility at Sonoma State University 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 United Auburn Indian Community of the Auburn Rancheria of California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after October 12, 2023. If competing requests for repatriation are received, the David A. Fredrickson Archaeological Collections Facility at Sonoma State University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The David A. Fredrickson Archaeological Collections Facility at Sonoma State University is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, § 10.10, and § 10.14.

Dated: August 30, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–19601 Filed 9–11–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036524; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Michigan State University, East Lansing, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Michigan State University intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Mackinac County, MI.

DATES: Repatriation of the cultural items in this notice may occur on or after October 12, 2023.

ADDRESSES: Judith Stoddart, Michigan State University, 287 Delta Court, East Lansing, MI 48824, telephone (517) 432–2524, email *stoddart@msu.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 Michigan State University. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by Michigan State University.

Description

The 381 cultural items were removed from Mackinac County, MI. Beginning in 1958, these objects were removed from the Gros Cap Archaeological District in Mackinac County, MI. Sites and localities within the District and surrounding area include the Gros Cap site (20MK6), the Campfire Site (20MK7), the post-contact era Gros Cap Cemetery, ''Ryerse Beach Cottage,'' ''Graham Point,'' and ''Killarney Beach.'' The objects were acquired by Orlando Greenlees. On at least one occasion, Greenlees acquired Native American cultural items from other individuals, including a Mr. Bicknell. Mr. Greenlees owned the property adjacent to the Gros Cap Cemetery and served as its caretaker. In 1970, Alicia Mackin acquired Greenlees' collection, and on April 12, 1976, she donated it to Michigan State University Museum.

The 381 unassociated funerary objects are five catlinite beads (3901.18.3.5; 3901.18.3.6; No catalog #), three catlinite pipe fragments (3901.18.2.6; 3901.26.5; 3901.26.13), one catlinite effigy pipe fragment (3901.18.3.1), three catlinite beaver effigies (3901.18.3.2), three catlinite pendant fragments (3901.18.3.3; 3901.18.3.4; 3901.18.3.8), one catlinite cross effigy (3901.18.3.7), one stone pipe fragment (3901.24.5), nine clay pipe bowl and stem fragments (3901.26.2; 3901.26.3; 3901.26.4; 3901.26.8; 3901.26.9; 3901.26.10; 3901.26.11; 3901.26.12; 3901.30.12), one Scottish pipe fragment (3901.26.7), one French pipe bowl fragment (3901.26.1), one ceramic pipe bowl with incising (3901.28.18), six lots consisting of ceramic sherds (3901.15.7; 3901.22.19; 3901.32.17; 3901.33.19; 3901.99.5), two refit ceramic vessels (3901.15.6/3901.99.4 and 3901.12.14/3901.15.7/3901.99.4/3901.99.5), 14 grit tempered ceramic sherds (3901.12.13; 3901.12.15; 3901.12.16; 3901.15.5; 3901.15.6; 3901.18.5.5; 3901.30.14; 3901.30.15; 3901.30.16; 3901.30.17; 3901.99.6; 3901.99.7; 3901.99.8; 3901.99.9), one copper bracelet (3901.18.2.4), one copper nugget (3901.22.17), two copper sheet sections (3901.30.13), two copper hair pullers (3901.33.12; 3901.33.13), two lots of copper strips (3901.15.8; 3901.22.21), two copper axe heads (3901.24.9; 3901.25.1), two lots consisting of copper beads (3901.22.22; 3901.24.10), three lots consisting of rolled copper kettle fragments (3901.22.20; 3901.30.23; 3901.33.16), one copper handle cover (3901.27.19); one copper kettle (3901.101); one copper kettle latch (3901.15.10), three lots consisting of copper tinkling cones (3901.15.9; 3901.22.23; 3901.31.7), three lots consisting of copper scrap (3901.31.8; 3901.99.3), 12 lots consisting of animal bones (3901.12.9; 3901.27.2; 3901.27.5; 3901.28.16; 3901.28.17; 3901.30.20; 3901.30.21; 3901.31.4; 3901.31.5; 3901.33.24; 3901.34.9; 3901.100.1), two lots consisting of burnt animal bones (3901.15.14; 3901.32.15), three lots consisting of animal teeth (3901.26.21; 3901.26.23; 3901.27.7), five lots consisting of worked animal bones (3901.27.9; 3901.27.11; 3901.27.12; 3901.27.13; 3901.32.14), three lots consisting of bird bones (3901.26.20; 3901.33.18; 3901.34.10), one lot consisting of turtle shells (3901.27.8), 11 lots consisting of fish bones (3901.18.5.4; 3901.27.4; 3901.30.2; 3901.30.6; 3901.30.7; 3901.31.3; 3901.34.8), six lots consisting of sturgeon bones (3901.12.8; 3901.15.4; 3901.27.1; 3901.31.2), three beaver mandible fragments (3901.12.12; 3901.26.17; 3901.30.8), two beaver incisors (3901.30.9), two eagle talons (3901.26.18), one boar tusk (3901.26.19), one raccoon mandible (3901.20.8), one deer tibia (2901.18.2.5), seven lots consisting of dog mandibles and teeth (3901.15.1; 3901.15.2; 3901.15.3; 3901.26.22; 3901.27.3; 3901.30.3; 3901.30.10), one piece of cut antler (3901.12.11), one small animal horn (3901.26.24), two bone needles (3901.18.4.1; 3901.18.4.2), one bone gorge (3901.28.14); one bone wedding spoon with birds on handle (3901.18.5.2), two bone awls (3901.28.13; 3901.34.7), five bone points (3901.28.8; 3901.28.9; 3901.28.10; 3901.28.11; 3901.28.12), four bone flakers (3901.28.4; 3901.28.5; 3901.28.6; 3901.28.7), one antler scraper (3901.24.3), one antler gorge (3901.28.15), one antler pressure flaker (3901.12.10), one bone carving (3901.33.2), one bone bracelet (3901.18.2.3), one bone knife (3901.18.2.2), one bone effigy of a standing man (3901.33.17), one carved bone comb (3901.26.15), four bone harpoon heads (3901.27.10; 3901.28.1; 3901.28.2; 3901.28.3), one carved boar tusk with hand and heart design (3901.26.16), two lots consisting of rolled birch bark fragments (3901.18.5.1; 3901.22.18), one piece of leather with bell attached (3901.22.28), one band of woven fibers with copper (3901.18.5.3), two lots consisting of fiber pieces (3901.22.29; 3901.31.11), 12 hand forged nails (3901.12.17; 3901.15.11; 3901.27.18; 3901.31.10; 3901.33.1), 10 square nails (3901.30.19 (n=2); 3901.34.22 (n=8)), one piece of decorative metal (3901.33.21), four lots consisting of iron and iron scrap (3901.31.9; 3901.33.22; 3901.34.24; 3901.100.5), two lots consisting of metal pieces and scrap (3901.12.7; 3901.27.17), one thin metal rod (3091.33.3), one iron rod fragment (3901.23.1), one shell (3901.27.6), three shell runtees (3901.33.6; 3901.33.7; 3901.33.8), two shell runtee fish effigies (3901.33.9; 3901.33.10), one shell standing man effigy (3901.34.11), two shell/bone ornaments (3901.18.2.6), three lots consisting of glass trade beads in various colors (3901.18.2.1; 3901.33.20), one lot consisting of black glass beads (3901.22.3), three lots consisting of blue glass trade beads (3901.22.13; 3901.22.14; 3901.27.23), one lot consisting of blue and white glass trade beads (3901.22.2), one lot consisting of brown glass trade beads (3901.22.12), two lots consisting of clear glass beads (3901.22.1; 3901.27.22), one lot consisting of green glass trade beads (3901.22.4), one lot consisting of light green glass trade beads (3901.22.9), two lots consisting of navy blue glass trade beads (3901.22.8; 3901.22.15), one lot consisting of red glass trade beads (3901.22.10), one lot consisting of red/amber glass trade beads (3901.22.7), one lot consisting of turquoise glass beads (3901.30.25), four lots consisting of white glass trade beads (3901.22.5; 3901.22.6; 3901.22.11; 3901.30.24), one lot consisting of yellow glass trade beads (3901.22.16), one lot consisting of chipped glass (3901.33.23); one lot consisting of melted glass (3901.33.25); four lots consisting of red ochre (3901.22.26; 3901.26.14; 3901.32.18; 3901.34.14), nine bifaces (3901.23.6; 3901.24.4; 3901.24.6; 3901.24.7; 3901.25.19; 3901.25.20; 3901.25.21; 3901.25.22; 3901.33.11), one flint drill (3901.25.5), one argillite projectile point (3901.25.18), 40 projectile points (3901.15.12; 3901.23.7; 3901.23.10; 3901.23.11; 3901.23.12; 3901.23.13; 3901.23.14; 3901.23.15; 3901.23.16; 3901.23.17; 3901.23.18; 3901.23.19; 3901.23.20; 3901.23.21; 3901.23.22; 3901.23.23; 3901.23.24; 3901.23.25; 3901.23.26; 3901.23.27; 3901.23.28; 3901.23.29; 3901.23.30; 3901.23.31; 3901.23.32; 3901.23.33; 3901.23.34; 3901.23.35; 3901.23.36; 3901.25.7; 3901.25.8; 3901.25.9; 3901.25.10; 3901.25.11; 3901.25.12; 3901.25.13; 3901.25.14; 3901.25.15; 3901.25.16; 3901.25.17), 9 flakes (3901.23.8; 3901.23.9; 3901.25.23; 3901.27.20; 3901.27.21; 2901.30.22; 3901.99.1; 3901.100.2; 3901.100.3), two slate pendants (3901.25.3; 3901.25.4), one stone ball (3901.30.4), one stone gorget (3901.25.2), one side notched stone gorget (3901.24.1), three stone pipe fragments (3901.25.6; 3901.26.6; 3901.28.19), one stone plummet (3901.24.2), two stones used for pottery temper (3901.30.1), one stone tamper (3901.27.24), one smooth stone (3901.30.11), one translucent stone pendant (3901.33.5), one piece of worked stone (3901.24.8), one piece of granite temper (3901.22.25), one soapstone fragment (3901.18.3.9), nine brass Jesuit rings (3901.18.1.1), one uniform braid (3901.29.3), four brass hawkbells (3901.18.1.2), one lot consisting of brass scrap (3901.99.2), 16 iron knives and fragments (3901.12.1; 3901.12.2; 3901.12.3; 3901.12.4; 3901.12.5; 3901.12.6; 3901.27.14; 3901.27.15; 3901.30.5 (n=2); 3901.32.16; 3901.34.16; 3901.34.17; 3901.34.18; 3901.34.19), one iron strike-a-lite (3901.22.24), two metal awls (3901.27.16; 3901.30.18), one gun fragment (3901.33.14), four French honey-colored gunflints (3901.23.2; 3901.23.3; 3901.23.4; 3901.33.4), one

pewter dish (3901.33.15), one lot of wood with leather and fabric, and attached copper mail and trade beads (3901.15.13); one strap handled pot (3901.102), three iron axe heads (3901.103; 3901.104; 3901.105), three porcelain sherds (3901.31.6; 3901.34.13; 3901.100.4), one brass navigational compass (3901.97), one metal disk (3901.34.23), two three-pronged forks with wooden handles (3901.34.20; 3901.34.21), one wire wound metal bracelet (3901.34.15), one lot consisting of carved wood fragments (3901.29.9), four lots consisting of wood fragments (3901.18.5.6, 3901.29.8, 3901.33.26, 3901.34.12), one grinding stone (3901.34.6), four whetstones (3901.34.2, 3901.34.3, 3901.34.4, 3901.34.5), one fossilized clam (3901.22.27), and one fossilized fern (3901.23.5).

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological, geographical, historical, oral traditional, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, Michigan State University has determined that:

- The 381 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and the Sault Ste. Marie Tribe of Chippewa Indians.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after October 12, 2023. If competing requests for repatriation are received, Michigan State University 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. Michigan State University 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 10.8, § 10.10, and § 10.14.

Dated: August 30, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–19600 Filed 9–11–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036523; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Witte Museum, San Antonio, TX

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Witte Museum 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 or Native Hawaiian organization. The human remains and associated funerary objects were removed from Val Verde County, TX.

DATES: Re-interment of the human remains and associated funerary objects in this notice may occur on or after October 12, 2023.

ADDRESSES: Jennifer Barron, Witte Museum, 3801 Broadway Street, San Antonio, TX 78209, telephone (210) 357–1900, email *jenniferbarron@wittemuseum.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 Witte 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 Witte Museum.

Description

From 1931 to 1969, human remains representing, at minimum, 25 individuals were recovered during multiple excavations, some organized by the Southwest Texas Archaeological Society and/or the Witte Museum from sites that include Shumla Caves 1–8, Eagle Cave, Jacal Canyon, and Zubermiller Cave in Val Verde County, TX. These human remains belong to six adult males, three adult females, one juvenile, seven infants, and eight individuals of indeterminate age and/or sex. They date to the Archaic period. The one associated funerary object is one lot consisting of ''shaman's kit.''

In the 1930s, human remains representing, at minimum, one individual were collected by George Nalle II during an excavation in the Lower Pecos Canyonlands in Val Verde County, TX. In 2018, these human remains were given to the Witte Museum. They date to the Archaic period. No associated funerary objects are present.

Sometime prior to 1969, human remains representing, at minimum, one individual were collected from the Fate Bell Shelter in Val Verde County, TX. These human remains date to the Archaic period. No associated funerary objects are present.

Sometime prior to 1969, human remains representing, at minimum, five individuals were collected by Richard and Ben McReynolds from sites in Val Verde Canyon in Val Verde County, TX, including a shelter in Deadman's Canyon. In 2019, these human remains were given to the Witte Museum. They date to the Archaic period. No associated funerary objects are present.

Aboriginal Land

The human remains and associated funerary objects in this notice were removed from known geographic locations. These locations are the aboriginal lands of one or more Indian Tribes. The following information was used to identify the aboriginal land: treaties, Acts of Congress, and Executive Orders.

The Witte Museum consulted with all Indian Tribes who are aboriginal to the area from which these human remains and associated funerary objects were removed. None of these Indian Tribes agreed to accept control of the human remains and associated funerary objects.

The Witte Museum requested that the Secretary, through the Native American Graves Protection and Repatriation Review Committee (Review Committee), consider a proposal for the re-interment according to State or other law of the human remains and associated funerary objects in this notice. The Review Committee carefully considered the request at its June 2023 meeting and recommended to the Secretary that the proposed re-interment proceed. A July 2023 letter transmitted the Secretary's independent review and concurrence with the Review Committee that:

- the Witte Museum consulted with the appropriate Indian Tribes,
- none of the Indian Tribes agreed to accept control,
- none of the Indian Tribes objected to the proposed re-interment, and
- the Witte Museum may proceed with the proposed re-interment of the human remains and associated funerary objects as identified in the Determinations section.

Re-interment is contingent on the publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement.

Determinations Made by the Witte Museum

Pursuant to NAGPRA and its implementing regulations, and after consultation with the Indian Tribes identified in this notice, the Witte Museum has determined that:

- The human remains described in this notice are Native American based on their precontact, Archaic period date.
- The human remains described in this notice represent the physical remains of 32 individuals of Native American ancestry.
- The one object described in this notice 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.
- No relationship of shared group identity can be reasonably traced between the Native American human remains and associated funerary objects and any Indian Tribe or Native Hawaiian organization.
- The human remains and associated funerary objects described in this notice were removed from the aboriginal land of the Comanche Nation, Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma.
- The human remains and associated funerary objects will be re-interred according to the law of Val Verde County, TX.

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 **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Re-interment of the human remains and associated funerary objects described in this notice may occur on or after October 12, 2023. If requests for disposition are received, the Witte Museum must determine the most appropriate requestor prior to disposition or re-interment. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The Witte 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 and § 10.11.

Dated: August 30, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–19599 Filed 9–11–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036531; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Missouri Department of Natural Resources, Jefferson City, MO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Missouri Department of Natural Resources (MoDNR) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from McDonald County, MO.

DATES: Repatriation of the human remains in this notice may occur on or after October 12, 2023.

ADDRESSES: Caroline Crecelius, Repatriation Coordinator, Missouri Department of Natural Resources, Division of State Parks, 1659 E Elm Street, Jefferson City, MO 65101, telephone (573) 526–4249, email *Caroline.Crecelius@dnr.mo.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 MoDNR. 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 MoDNR.

Description

Human remains representing, at minimum, one individual were removed from McDonald County, MO. These human remains (a partial, fragmented skull) were removed from private property by Lieutenant Andy Pike of the Newton County Sheriff's Office, who in turn transferred them to Detective Pierson at the McDonald County Sheriff's Office. Following a determination that they were not part of an active criminal case, Detective Pierson transferred the human remains to the Missouri State Historic Preservation Office. Based on the opinion of a regional archeologist, the human remains date to the Late Woodland period (about 1550–950 years

before the present). No associated funerary objects are present.

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, linguistic, and oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, MoDNR has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Caddo Nation of Oklahoma and The Osage Nation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after October 12, 2023. If competing requests for repatriation are received, MoDNR 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. MoDNR 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: August 30, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–19602 Filed 9–11–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 231S180110; S2D2S SS08011000 SX064A000 23XS501520; OMB Control Number 1029–0054]

Submission to the Office of Management and Budget for Review and Approval; Abandoned Mine Reclamation Funds

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before November 13, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC 20240, or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0054 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at 202–208–2716. 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. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) is the collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use 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 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.

Abstract: 30 CFR part 872 establishes a procedure whereby States and Indian tribes submit written statements announcing the State/Tribe's decision not to submit reclamation plans, and therefore, will not be granted AML funds. Additional information is provided to OSMRE by state reclamation agencies to determine eligibility of economic development projects requesting Treasury Funds allocated to the Economic Revitalization (AMLER) Program.

Title of Collection: Abandoned Mine Reclamation Funds.

OMB Control Number: 1029–0054.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: States and Indian Tribes.

Total Estimated Number of Annual Respondents: 6.

Total Estimated Number of Annual Responses: 101.

Estimated Completion Time per Response: 114 hours.

Total Estimated Number of Annual Burden Hours: 11,500.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: None.

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 authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

Information Collection Clearance Officer, Division of Regulatory Support.

[FR Doc. 2023–19685 Filed 9–11–23; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 231S180110; S2D2S SS08011000 SX064A000 23XS501520; OMB Control Number 1029–0091]

Agency Information Collection Activities; Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before October 12, 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. Please provide a copy of your comments to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC 20240, or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0091 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at (202) 208–2716. 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. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on May 4, 2023 (88 FR 28612). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. 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.

Abstract: Surface coal mining permit applicants who conduct or propose to conduct surface coal mining and reclamation operations on Indian lands must comply with the requirements of 30 CFR 750 pursuant to section 710 of SMCRA.

Title of Collection: Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands.

OMB Control Number: 1029–0091.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses.

Total Estimated Number of Annual Respondents: 4.

Total Estimated Number of Annual Responses: 36.

Estimated Completion Time per Response: Varies from 120 hours to 1,800 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 7,320.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Once and annually.

Total Estimated Annual Nonhour Burden Cost: $34,000.

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 authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

Information Collection Clearance Officer, Division of Regulatory Support.

[FR Doc. 2023–19626 Filed 9–11–23; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 231S180110; S2D2S SS08011000 SX064A000 23XS501520; OMB Control Number 1029–0063]

Submission to the Office of Management and Budget for Review and Approval; Fee Collection and Coal Production Reporting and Form OSM–1, Coal Reclamation Fee Report

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before November 13, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC 20240, or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0063 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at 202–208–2716. 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. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) is the collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use 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 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.

Abstract: The information is used to maintain a record of coal produced for sale, transfer, or use nationwide each calendar quarter, the method of coal removal and the type of coal, and the basis for coal tonnage reporting in compliance with 30 CFR 870 and section 401 of Public Law 95–87. Individual reclamation fee payment liability is based on this information. Without the collection of this information, OSMRE could not implement its regulatory responsibilities and collect the fee.

Title of Collection: Fee Collection and Coal Production Reporting and form OSM–1, Coal Reclamation Fee Report.

OMB Control Number: 1029–0063.

Form Number: OSM–1.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses.

Total Estimated Number of Annual Respondents: 425.

Total Estimated Number of Annual Responses: 6,023.

Estimated Completion Time per Response: 5 minutes.

Total Estimated Number of Annual Burden Hours: 465.

Respondent's Obligation: Mandatory.

Frequency of Collection: Annual.

Total Estimated Annual Nonhour Burden Cost: $164,800.

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 authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

Information Collection Clearance Officer, Division of Regulatory Support.

[FR Doc. 2023–19686 Filed 9–11–23; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On September 6, 2023, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Texas in *United States* v. *Transocean Offshore Deepwater Drilling Inc.,* Civil Case No. 4:23–cv–03317 (S.D. Tex.).

In this action, the United States, on behalf of the U.S. Environmental Protection Agency, filed a complaint alleging that Transocean Offshore Deepwater Drilling Inc. (''Defendant'') violated the Clean Water Act (''CWA''), 33 U.S.C. 1251, *et seq.* by discharging without first obtaining coverage under the National Pollutant Discharge Elimination System General Permit for New and Existing Sources and New Dischargers in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category for the Western and Central Portion of the Outer Continental Shelf of the Gulf of Mexico (GMG290000) (the ''General Permit''), violating terms and conditions of the General Permit, and exceeding effluent limitations prescribed by the General Permit. The complaint seeks an Order enjoining Defendant from further violating the CWA and the General Permit and requiring Defendant to pay a civil penalty.

Under the proposed settlement, Defendant agrees to pay a civil penalty of $507,000 and to develop and implement a compliance system to ensure future compliance with the CWA and the General Permit. The compliance system will be subject to review by a third-party verifier.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and

Natural Resources Division, and should refer to *United States* v. *Transocean Offshore Deepwater Drilling Inc.,* D.J. Ref. No. 90–5–1–1–12240. 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 e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://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 $40.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Thomas Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–19646 Filed 9–11–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Agricultural Recruitment System Forms Affecting Migratory Farm Workers

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before October 12, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202–693–6782, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: State Workforce Agencies (SWAs) are required by Federal regulations at 20 CFR 653.500 to participate in the intrastate and interstate clearance system for the orderly recruitment and movement of agricultural workers. Wagner-Peyser Employment Service (ES) regulations at § 653.501(a), (b), (c) and (d) enumerate the contents of these orders. The Employment and Training Administration (ETA) created the Agricultural Clearance Order (Form ETA–790) for the recruitment of workers beyond the local commuting area (20 CFR 653.501). Per 2 CFR 200.334, the record retention for Form ETA–790 is three years from the date of submission of the final expenditure report as authorized by DOL. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 10, 2023 (88 FRN 21209).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Agency: DOL–ETA.

Title of Collection: Agricultural Recruitment System Forms Affecting Migratory Farm Workers.

OMB Control Number: 1205–0134.

Affected Public: Businesses or other for-profits; not-for-profit institutions; State, local and Tribal governments.

Number of Respondents: 852.

Frequency: Varies.

Number of Responses: 852.

Estimated Average Time per Response: Varies.

Annual Burden Hours: 2,982 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2023–19552 Filed 9–11–23; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Respirator Program Records

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before October 12, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3)

ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202–693–6782, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Sections 101(a) and 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 811(a) and 813(h), authorizes MSHA to collect information necessary to carryout its duty in protecting the safety and health of miners. MSHA requires that certain records be kept in connection with respirators, including: written standard operating procedures governing the selection and use of respirators; records of the date of issuance of the respirator; and fit-test results. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 21, 2023 (88 FRN 17021).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Agency: DOL–MSHA.

Title of Collection: Respirator Program Records.

OMB Control Number: 1219–0048.

Affected Public: Businesses or other for-profits.

Number of Respondents: 350.

Frequency: On occasion.

Number of Responses: 6,300.

Annual Burden Hours: 3,588 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2023–19555 Filed 9–11–23; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Application for Waiver of Surface Sanitary Facilities' Requirements (Pertaining to Coal Mines)

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before October 12, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202–693–6782, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Title 30 CFR 71.400 through 71.402 and 75.1712–1 through 75.1712–3 require coal mine operators to provide bathing facilities, clothing change rooms, and sanitary flush toilet facilities in a location that is convenient for use of the miners. If the operator is unable to meet any or all of the requirements, he/she may apply for a waiver. Title 30 CFR 71.403, 71.404, 75.1712–4, and 75.1712–5 provide procedures by which an operator may apply for and be granted a waiver. Applications are filed with the District Manager for the district in which the mine is located and must contain the name and address of the mine operator, name and location of the mine, and a detailed statement of the grounds on which the waiver is requested. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 21, 2023 (88 FRN 17025).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Agency: DOL–MSHA.

Title of Collection: Application for Waiver of Surface Sanitary Facilities' Requirements (Pertaining to Coal Mines).

OMB Control Number: 1219–0024.

Affected Public: Businesses or other for-profits.

Number of Respondents: 186.

Frequency: On occasion.

Number of Responses: 186.

Annual Burden Hours: 74 hours.

Total Estimated Annual Other Costs Burden: $930.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2023–19554 Filed 9–11–23; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Law Enforcement Officer's Injury or Occupational Disease (CA–721); and Notice of Law Enforcement Officer's Death (CA–722)

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with

the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before October 12, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Michelle Neary by telephone at 202–693–6312, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The CA–721 and CA–722 are used for filing claims for compensation for injury and death to non-Federal law enforcement officers under the provisions of 5 U.S.C. 8191 *et seq.* The forms provide the basic information needed to process the claims made for injury or death. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 8, 2023 (88 FR 29696).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OWCP.

Title of Collection: Notice of Law Enforcement Officer's Injury or Occupational Disease (CA–721); and Notice of Law Enforcement Officer's Death (CA–722).

OMB Control Number: 1240–0022.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 2.

Total Estimated Number of Responses: 2.

Total Estimated Annual Time Burden: 3 hours.

Total Estimated Annual Other Costs Burden: $3.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michelle Neary,

Senior PRA Analyst.

[FR Doc. 2023–19551 Filed 9–11–23; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Overpayment Detection and Recovery Activities

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before October 12, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202–693–6782, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Form ETA–227 is a quarterly data collection concerned with identifying fraud. Data cells describe fraud identified through tools (State and National Directories of New Hires) and break out fraud cases in the Federal-State Extended Benefits program. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 29, 2023 (87 FRN 80196).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Agency: DOL–ETA.

Title of Collection: Overpayment Detection and Recovery Activities.

OMB Control Number: 1205–0187.

Affected Public: State Workforce Agencies.

Total Estimated Number of Respondents: 53.

Frequency: Quarterly.

Total Estimated Annual Responses: 212.

Estimated Average Time per Response: 14 hours.

Estimated Total Annual Burden Hours: 2,968 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2023–19553 Filed 9–11–23; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Revision of Existing Collection; Longshore and Harbor Workers' Compensation Act Employer's First Report of Injury or Occupational Illness (LS–202) and Employer's Supplementary Report of Accident or Occupational Illness (LS–210)

AGENCY: Division of Federal Employees', Longshore and Harbor Workers' Compensation (DFELHWC), Office of Workers' Compensation Programs, Department of Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This request helps to ensure that: requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. OWCP/DFELHWC is soliciting comments on the information collection for ''Employer's First Report of Injury or Occupational Illness (LS–202), Employer's Supplementary Report of Accident or Occupational Illness (LS–210).''

DATES: Consideration will be given to all written comments received by November 13, 2023.

ADDRESSES: You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

Written/Paper Submissions: Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL-OWCP/DFELHWC, Office of Workers' Compensation Programs, Division of Federal Employees' Longshore and Harbor Workers' Compensation, U.S. Department of Labor, 200 Constitution Ave. NW, Room S3323, Washington, DC 20210.
- OWCP/DFELHWC will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Anjanette Suggs, Office of Workers' Compensation Programs, OWCP at *suggs.anjanette@dol.gov* (email); or (202) 354–9660.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers' injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. In addition, several acts extend the Longshore Act's coverage to certain other employees. Legal authority for this information collection is found at 33 U.S.C. 930(a) and (b).

The LS–202 is used by employers initially to report injuries that have occurred which are covered under the Longshore Act and its related statutes. The LS–210 is used to report additional periods of lost time from work.

II. Desired Focus of Comments

The OWCP/DFELHWC is soliciting comments concerning the proposed information collection request (ICR) titled, ''Employer's First Report of Injury or Occupational Illness (LS–202), Employer's Supplementary Report of Accident or Occupational Illness (LS–210).''

OWCP/DFELHWC is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of OWCP/DFELHWC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used in the estimate.
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Background documents related to this information collection request are available at *https://regulations.gov* and at DOL–OWCP located at 200 Constitution Ave. NW, Room S3323, Washington, DC 20210. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This information collection request concerns the ''Pre-Hearing Statement (LS–18).'' OWCP/DFELHWC has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Revision of currently approved collection.

Agency: DOL-Office of Workers' Compensation Programs, Division of Federal Employees', Longshore and Harbor Workers' Compensation, OWCP/DFELHWC.

OMB Control Number: 1240–0003.

Affected Public: Individuals or households.

Number of Respondents: 37,089.

Frequency: On occasion.

Number of Responses: 37,089.

Annual Burden Hours: 8,987 hours.

Annual Respondent or Recordkeeper Cost: $212,564.

OWCP Forms: Form LS–202, Employer's First Report of Injury or Occupational Illness, Form LS–210, Employer's Supplementary Report of Accident or Occupational Illness.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

Authority: 44 U.S.C. 3506(C)(2)(A).

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2023–19556 Filed 9–11–23; 8:45 am]

BILLING CODE 4510–CF–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (23–096)]

NASA Astrophysics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the

Astrophysics Advisory Committee. This Committee reports to the Director, Astrophysics Division, Science Mission Directorate, NASA Headquarters. 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: Thursday, October 19, 2023, 9:00 a.m.–5:00 p.m., Friday, October 20, 2023, 9:00 a.m.–5:00 p.m., Eastern 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.

For Thursday, October 19, 2023, the WebEx information for attendees is: *https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=m25faa2c1f24e1a4a74ae15625b9c48a6.* The meeting number is: 2760 236 9042 and the meeting password is: Apac1019#. To join by telephone the numbers are, 1–929–251–9612 or 1–415–527–5035. (Access Code: 2760 236 9042).

For Friday, October 20, 2023, the WebEx information for attendees is: *https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=mf6dea851974dc366d1f553616130f1d1.* The meeting number is: 2764 614 2041 and the meeting password is: Apac1020#. To join by telephone the numbers are 1–929–251–9612 or 1–415–527–5035 (Access code: 2764 614 2041).

The agenda for the meeting includes the following topics:

—Astrophysics Division Update
—Updates on Specific Astrophysics Missions
—Discussion of Reports from the Program Analysis Groups

The agenda and Program Analysis Group presentations will be posted on the Astrophysics Advisory Committee web page: *https://beta.science.nasa.gov/researchers/nac/science-advisory-committees/apac/.*

The public may submit and upvote comments/questions ahead of the meeting through the website: APAC Fall Meeting—NASA (cnf.io), or *https://nasa.cnf.io/sessions/cnat/#!/dashboard* that will be opened for input on October 1, 2023.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2023–19641 Filed 9–11–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 23–095]

NASA Federal Advisory Committees; Charter Renewals

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of charter renewals for four NASA Federal advisory committees.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), and after consultation with the Committee Management Secretariat, General Services Administration, the NASA Administrator has determined that renewal of the charters of four NASA Federal advisory committees is in the public interest in connection with the performance of duties imposed on NASA by law. These four advisory committees are: Astrophysics Advisory Committee, Earth Science Advisory Committee, Heliophysics Advisory Committee, and Planetary Science Advisory Committee. The renewed charters are for a two-year period ending August 30, 2025.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Diane Rausch, NASA Advisory Committee Management Officer, NASA Headquarters, Washington, DC 20546; or 202–358–4510 or *diane.rausch@nasa.gov.*

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2023–19621 Filed 9–11–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Revisions of Agency Information Collections for Comments Request: Proposed Collections

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comments.

SUMMARY: The National Credit Union Administration (NCUA) will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice.

DATES: Written comments should be received on or before November 13, 2023 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Mahala Vixamar, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314, Suite 5067; Fax No. 703–519–8579; or Email at *PRAComments@NCUA.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by contacting Mahala Vixamar at (703) 718–1155.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0004.

Title: NCUA Call Report.

Type of Review: Revision of a currently approved collection.

Abstract: Sections 106 and 202 of the Federal Credit Union Act require federally insured credit unions (FICUs) to make financial reports to the NCUA. Section 741.6 of the NCUA Rules and Regulations requires all FICUs to submit a Call Report quarterly. Financial information collected through the Call Report is essential to NCUA supervision of federal credit unions. This information also facilitates NCUA monitoring of other credit unions with share accounts insured by the National Credit Union Share Insurance Fund (NCUSIF).

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 81,552.

Reason for Change: There are proposed changes to the Call Report to add two accounts. These accounts will collect the number and amount of loans to borrowers experiencing financially difficulty who are not in compliance with the modified loan terms. Furthermore, another account will

collect the allowance for credit losses on available-for-sale debt securities.

OMB Number: 3133–0040.

Title: Federal Credit Union Occupancy, Planning, and Disposal of Acquired and Abandoned Premises—12 CFR 701.36.

Type of Review: Extension of a previously approved collection.

Abstract: Section 107(4) of the Federal Credit Union Act authorizes a federal credit union (FCU) to purchase, hold, and dispose of property necessary or incidental to its operations. Section 701.36 of NCUA Rules and Regulations interprets and implements this provision of the FCU Act by establishing occupancy, planning, and disposal requirements for acquired and abandoned premises. It also prohibits certain transactions. In addition, this section includes provisions in which an FCU may seek a waiver from certain requirements of the rule. NCUA reviews written waiver requests and makes a determination on the request based on safety and soundness considerations.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 30.

OMB Number: 3133–0067.

Title: Corporate Credit Union Monthly Call Report and Annual Report of Officers.

Type of Review: Revision of a currently approved collection.

Abstract: Section 202(a)(1) of the Federal Credit Union Act (Act) requires federally insured credit unions to make reports of condition to the NCUA Board upon dates selected by it. Corporate credit unions report this information monthly on NCUA Form 5310, also known as the Corporate Credit Union Call Report. The financial and statistical information is essential to NCUA in carrying out its responsibility for supervising corporate credit unions. The Federal Credit Union Act, 12 U.S.C. 1762, specifically requires federal credit unions to report the identity of credit union officials. Section 741.6(a) requires federally-insured credit unions to submit a Report of Officials annually to NCUA containing the annual certification of compliance with security requirements. The branch information is requested under the authority of § 741.6 of the NCUA Rules and Regulations. NCUA utilizes the information to monitor financial conditions in corporate credit unions, and to allocate supervision and examination resources.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 539.

Reason for Change: The 5310 Corporate Call Report, Profile, and Corporate Financial Performance Reports (CFPR) for calendar year 2024 have several changes that entail removal of references to Current Expected Credit Loss (CECL) early adoption language; removal of the Available for Sale Book Value references; additional supplemental information for charitable donation accounts, subordinated debt purchased from member credit unions, and additional information about CUSO investments; additional liquidity, weighted average life (WAL), and WAL with 50 percent prepayment information reporting, and Federal Reserve Bank Excess Balance Account reporting; clarification of Information System and Technology questions on the Profile form; and corresponding updates to the Corporate Financial Performance Report (CFPR), including a new template for aggregate CFPRs that shows weighted average ratios.

OMB Number: 3133–0127.

Title: Purchase, Sale, and Pledge of Eligible Obligations—12 CFR 701.23.

Type of Review: Revision of a currently approved collection.

Abstract: Section 701.23 authorizes Federal Credit Unions to sell and pledge loans and purchase eligible obligations from other institutions.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 12,748.

OMB Number: 3133–0189.

Title: Contractor Budget and Representations and Certifications.

Type of Review: Extension of a previously approved collection.

Abstract: Standardized information from prospective outside counsel is essential to the NCUA in carrying out its responsibility as regulator, conservator, and liquidating agent for federally insured credit unions. The information will enable the NCUA to further standardize the data it uses to select outside counsel, consider additional criteria in making its selections, and improve efficiency and recordkeeping related to its selection process.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 200.

OMB Number: 3133–0199.

Title: Capital Planning and Stress Testing, 12 CFR 702–E.

Type of Review: Revision of a currently approved collection.

Abstract: To protect the National Credit Union Share Insurance Fund (NCUSIF) and the credit union system, the largest Federally Insured Credit Unions (FICUs) need to have systems and processes in place to monitor and maintain their capital adequacy. Subpart C of Part 702 of NCUA's regulations codifies the capital planning and stress testing requirements for federally insured credit unions with $10 billion or more in assets (covered credit unions). NCUA issues these regulations under the authority of Section 120(a) requiring their supervised institutions to conduct annual stress tests. Stress testing is needed to assess the potential impact of expected and stressed economic conditions on the consolidated earnings, losses, and capital of a covered credit union over the planning horizon, taking into account the current state of the covered credit union and the covered credit union's risks, exposures, strategies, and activities.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 9,380.

Reason for Change: Burden increased due to the increase in the number of credit unions meeting the asset size threshold for capital planning and self-run stress testing and because of the updated self-run SST results reporting template, as well as reporting of internal capital analysis results on the updated template.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) whether the collection of information is necessary for the proper performance of the function 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, 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 the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By the National Credit Union Administration Board.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2023–19585 Filed 9–11–23; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Revisions of Agency Information Collection of a Previously Approved Collection; Request for Comments

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of submission to the Office of Management and Budget.

SUMMARY: As required by the Paperwork Reduction Act of 1995, The National Credit Union Administration (NCUA) is submitting the following extensions and revisions of currently approved collections to the Office of Management and Budget (OMB) for renewal.

DATES: Written comments should be received on or before October 12, 2023 to be assured consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by contacting Mahala Vixamar at (703) 718–1155, emailing *PRAComments@ncua.gov,* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0098.

Title: Advertising of Excess Insurance, 12 CFR 740.3.

Type of Review: Extension of a previously approved collection.

Abstract: Federally insured credit unions which offer or provide excess insurance coverage for their accounts must indicate the type and amount of such insurance, the name of the carrier and a statement that the carrier is not affiliated with the NCUSIF or the Federal government in all advertising that mentions account insurance.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Number of Respondents: 297.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 297.

Estimated Hours per Response: 1.

Estimated Total Annual Burden Hours: 297.

Reason for Change: Minor adjustments are attributed to current updated data since the last previous submission.

OMB Number: 3133–0108.

Title: Monitoring Bank Secrecy Act Compliance.

Type of Review: Revision of a currently approved collection.

Abstract: The collection is needed to allow NCUA to determine whether credit unions have established a program reasonably designed to assure and monitor their compliance with current recordkeeping requirements established by Federal statute and Department of the Treasury regulation.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Number of Respondents: 4,686.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 4,686.

Estimated Hours per Response: 16.

Estimated Total Annual Burden Hours: 74,976.

Reason for Change: Burden decreased due to the number of respondents decreasing.

OMB Number: 3133–0117.

Title: Designation of Low Income Status, 12 CFR 701.34(a).

Type of Review: Revision of a currently approved collection.

Abstract: The Federal Credit Union Act (12 U.S.C. 1752(5)) authorizes the NCUA Board to define low-income members so that credit unions with a membership serving predominantly low-income members can benefit from certain statutory relief and receive assistance from the Community Development Revolving Loan Fund (CDRLF). Under the authority of 12 CFR 701.34(a), NCUA must obtain certain data to determine if a credit union qualifies for the designation. NCUA uses the information from credit unions to determine whether they meet the criteria for the low-income designation.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Number of Respondents: 227.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 227.

Estimated Hours per Response: 1.57.

Estimated Total Annual Burden Hours: 356.

Reason for Change: Burden decreased due to the number of respondents decreasing.

OMB Number: 3133–0130.

Title: Written Reimbursement Policy, 12 CFR 701.33.

Type of Review: Revision of a currently approved collection.

Abstract: Each Federal Credit Union (FCU) must draft a written reimbursement policy to ensure that the FCU makes payments to its directors within the guidelines that the FCU has established in advance and to enable examiners to easily verify compliance by comparing the policy to the actual reimbursements.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Number of Respondents: 2,931.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 2,931.

Estimated Hours per Response: 0.50.

Estimated Total Annual Burden Hours: 1,465.5.

Reason for Change: Burden decreased due to the number of respondents decreasing.

OMB Number: 3133–0154.

Title: Prompt Corrective Action, 12 CFR 702 (Subparts A–D).

Type of Review: Revision of a currently approved collection.

Abstract: Section 216 of the Federal Credit Union Act (12 U.S.C. 1790d) mandates prompt corrective action requirements for federally insured credit unions (FICUs) that become less than well capitalized. The NCUA Board is required to (1) adopt, by regulation, a system of prompt corrective action to restore the net worth of inadequately capitalized FICUs; and (2) develop an alternative system of prompt corrective action for new credit unions that carries out the purpose of prompt corrective actions while allowing an FICU reasonable time to build its net worth to an adequately capitalized level. Part 702 implements the statutory requirements and, to achieve this, various information collections to meet the purpose of prompt corrective action as circumstances require.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Number of Respondents: 86.

Estimated Number of Responses per Respondent: 1.825.

Estimated Total Annual Responses: 157.

Estimated Hours per Response: 15.497.

Estimated Total Annual Burden Hours: 2,433.

Reason for Change: Burden increased due to the number of hours per response increasing.

OMB Number: 3133–0203.

Title: IRPS 19–1, Exceptions to Employment Restrictions Under Section 205(d) of the Federal Credit Union Act.

Type of Review: Revision of a currently approved collection.

Abstract: This information collection is required under Section 205(d) of the

Federal Credit Union Act (FCU Act) to allow the National Credit Union Administration (NCUA) Board to make an informed decision whether to grant a waiver of the prohibition imposed by law under Section 205(d) of the FCU Act. Section 205(d) of the FCU Act prohibits a person who has been convicted of any criminal offense involving dishonesty or breach of trust, or who has entered into a pretrial diversion or similar program in connection with a prosecution for such offense, from participating in the affairs of a federally-insured credit union except with the prior written consent of the NCUA Board. The Interpretive Ruling and Policy Statement (IRPS) 19–1 prescribes the information collection contained therein, implement the requirements of the FCU Act.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Number of Respondents: 4.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 4.

Estimated Hours per Response: 0.75.

Estimated Total Annual Burden Hours: 3.

OMB Number: 3133–0204.

Title: NCUA Profile.

Type of Review: Revision of a currently approved collection.

Abstract: Sections 106 and 202 of the Federal Credit Union Act require federally insured credit unions to make financial reports to the NCUA. Section 741.6 requires insured credit unions to submit a Credit Union Profile (NCUA Form 4501A) and update the Profile within 10 days of election or appointment of senior management or volunteer officials or 30 days of other changes in Program information. The NCUA website further directs credit unions to review and certify their Profiles every Call Report cycle. Credit union information collected through the Profile is essential to the NCUA supervision of federal credit unions and also facilitates the NCUA monitoring of other credit unions with share accounts insured by the National Credit Union Share Insurance Fund (NCUSIF).

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Number of Respondents: 4,712.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Responses: 18,848.

Estimated Hours per Response: 2.

Estimated Total Annual Burden Hours: 37,696.

Reason for Change: Burden decreased due to the number of respondents decreasing.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) whether the collection of information is necessary for the proper performance of the function 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, 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 the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By the National Credit Union Administration Board.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2023–19598 Filed 9–11–23; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0051]

Information Collection: Regulatory Issue Summary 2009–06, Revision 1, Importance of Giving the NRC Advance Notice of Intent To Pursue License Renewal

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a proposed collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Regulatory Issue Summary 2009–06, Revision 1, Importance of Giving the NRC Advance Notice of Intent to Pursue License Renewal.''

DATES: Submit comments by October 12, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice 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.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0051 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–2022–0051.
- *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.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML23094A304. The supporting statement is available in ADAMS under Accession No. ML23054A146.
- *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.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice 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 NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, 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 comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a proposed collection of information to OMB for review entitled ''Regulatory Issue Summary 2009–06, Revision 1, Importance of Giving the NRC Advance Notice of Intent to Pursue License Renewal.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on November 23, 2022, 87 FR 71696.

1. *The title of the information collection:* Regulatory Issue Summary 2009–06, Revision 1, Importance of Giving the NRC Advance Notice of Intent to Pursue License Renewal.

2. *OMB approval number:* An OMB Control Number has not yet been assigned to this proposed information collection.

3. *Type of submission:* New.

4. *The form number, if applicable:* Not applicable.

5. *How often the collection is required or requested:* Annually.

6. *Who will be required or asked to respond:* Commercial nuclear power plant licensees who wish to renew their operating licenses and holders of renewed licenses.

7. *The estimated number of annual responses:* 4.

8. *The estimated number of annual respondents:* 4.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 32.

10. *Abstract:* The NRC is issuing Revision 1 of this regulatory issue summary (RIS) to emphasize the importance of (1) providing the NRC with advance notice of licensee plans for license renewal and (2) notifying the NRC of changes in previously announced plans for license renewal. Responses to this RIS will allow the NRC staff to better plan and budget for the reviews of applications submitted in accordance with part 54 of title 10 of the *Code of Federal Regulations,* ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants.''

Dated: September 6, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–19571 Filed 9–11–23; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98302; File No. SR–NYSEARCA–2023–37]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the COtwo Advisors Physical European Carbon Allowance Trust Under NYSE Arca Rule 8.201–E

September 6, 2023.

On May 23, 2023, NYSE Arca, Inc. filed with the Securities and Exchange Commission (''Commission'' or ''NYSE Arca''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the COtwo Advisors Physical European Carbon Allowance Trust. The proposed rule change was published for comment in the **Federal Register** on June 12, 2023.[3]

On July 25, 2023, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission has received no comments on the proposal. This order institutes proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Exchange's Proposal

As described in more detail in the Notice,[7] the Exchange proposes to list and trade shares (''Shares'') of the COtwo Advisors Physical European Carbon Allowance Trust (''Trust'') [8] under NYSE Arca Rule 8.201–E, which governs the listing and trading of Commodity-Based Trust Shares. The sponsor of the Trust is COtwo Advisors LLC, a Delaware limited liability company (''Sponsor''). State Street Bank and Trust Company serves as the Trust's administrator (''Administrator'') and as the Trust's transfer agent and as custodian of the Trust's cash, if any (''Cash Custodian'').[9]

Operation of the Trust

The investment objective of the Trust will be for the Shares to reflect the performance of the price of EU Carbon Emission Allowances for stationary installations (''EUAs''), less the Trust's expenses.[10] The Trust intends to achieve its objective by investing all of its assets in EUAs on a non-discretionary basis (*i.e.,* without regard to whether the value of EUAs is rising or falling over any particular period).[11]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97653 (June 6, 2023), 88 FR 38110 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 97972, 88 FR 49508 (July 31, 2023). The Commission designated September 10, 2023, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Notice, *supra* note 3.

[8] According to the Exchange, the Trust, which was formed as a Delaware statutory trust on January 12, 2023, will not be registered as an investment company under the Investment Company Act of 1940, as amended, and is not a commodity pool for purposes of the Commodity Exchange Act, as amended. On May 12, 2023, the Trust filed with the Commission a registration statement on Form S–1 (File No. 333–271910) (''Registration Statement'') under the Securities Act of 1933. The Exchange represents that the Registration Statement is not yet effective, and the Shares will not trade on the Exchange until such time that the Registration Statement becomes effective.

[9] The Cash Custodian is responsible for holding the Trust's cash as well as receiving and dispensing cash on behalf of the Trust in connection with the payment of Trust expenses.

[10] *See* Notice, *supra* note 3, 88 FR at 38110.

[11] *Id.*

Shares of the Trust will represent units of fractional undivided beneficial interest in and ownership of the Trust. The Trust's only ordinary recurring expense will be the Sponsor's annual fee.[12] The Trust will not hold any assets other than EUAs or possibly cash. The Trust may hold a very limited amount of cash to pay Trust expenses. The Trust may also cause the Sponsor to receive EUAs from the Trust in such a quantity as may be necessary to pay the Sponsor's annual fee.[13]

The Trust will not invest in futures, options, or swap contracts on any futures exchange or in the over-the-counter market. The Trust will not hold or trade in commodity futures contracts, ''commodity interests,'' or any other instruments regulated by the Commodity Exchange Act. As stated above, the Trust's Cash Custodian may hold cash proceeds from EUA sales to pay Trust expenses. All EUAs will be held in the Union Registry (defined below). The Exchange states that the Trust is not a proxy for investing in physical carbon credits. Rather, according to the Exchange, the Shares are intended to provide a cost-effective means of obtaining investment exposure to the price of EUAs through the securities markets that is similar to an investment in futures contracts or other derivatives.[14]

Description of EUAs [15]

According to the Exchange, the European Union Emissions Trading System (''EU ETS'') is a ''cap and trade'' system that caps the total volume of greenhouse gas (''GHG'') emissions from installations and aircraft operators responsible for around 40% of EU GHG emissions.[16] The EU ETS is the largest cap and trade system in the world and covers more than 11,000 power stations and industrial plants in 31 countries, and flights between airports of participating countries.[17] The EU ETS is administered by the EU Commission, which issues a predefined amount of EUAs through auctions or free allocation. An EUA represents the right to emit one metric ton of carbon dioxide equivalent into the atmosphere by operators of stationary installations (''Covered Entities'').[18] By the end of April each year, all Covered Entities are required to surrender EUAs equal to the total volume of actual emissions from their installation for the last calendar year. EU ETS operators can buy or sell EUAs to achieve EU ETS compliance.[19]

In 2012, EU ETS operations were centralized into a single EU registry operated by the EU Commission (''Union Registry''), which covers all countries participating in the EU ETS.[20] The Union Registry is an online database that holds accounts for all entities covered by the EU ETS as well as for participants (such as the Trust) not covered under the EU ETS. An account must be opened in the Union Registry in order to transact in EUAs, and the Union Registry is at all times responsible for holding the EUAs. All EUAs are held in the Union Registry.

Trading and Pricing of EUAs

According to the Exchange, there are two primary avenues for trading EUAs: a primary market and a secondary market. The primary market involves participation in a regularly scheduled auction.[21] The secondary market involves transactions between buyers and sellers on regulated markets via trading in spot, options, and futures contracts.[22] There are also over-the-counter transactions, but they comprise a negligible percentage of transactions.[23]

The Exchange represents that the EUA markets are generally liquid. EUA auctions are held on a near-daily basis throughout the year, other than between mid-December to mid-January, when auctions are paused.[24] Prices achieved in these auctions are published on various publicly-accessible websites, including the European Commission's primary website.

The secondary market trading takes place predominantly on the European Energy Exchange AG (''EEX'') and ICE Endex.[25] As of January 2023, the secondary market had average daily trading volume of €2 billion, with the majority of the liquidity in the futures market.[26] Prices for secondary market transactions are published on various publicly-accessible websites, including those of EEX and ICE Endex.[27] Both EEX and ICE Endex are affiliates of Exchange groups that are members of the Intermarket Surveillance Group.

Most liquidity in the secondary market is achieved by trading futures contracts. These contracts have expiration going out as far as 2030. The most liquid contract is the single day futures contract on EUAs (''Daily EUA Future''), which settles each day at the close of trading.[28] Generally, Daily EUA Futures trade from approximately 2:00 a.m. Eastern Time (''E.T.'') to approximately 12:00 p.m. E.T. The settlement price is fixed each business day and is published at approximately 12:15 E.T. Final cash settlement occurs the first business day following the expiry day.

In 2021, the secondary spot market for EUAs (including the Daily EUA Future) averaged around 2.4 million EUAs daily, and the primary auctions accounted for almost 2.5 million EUAs being auctioned several times per week.[29] The current value (spot price) for an EUA is greatly influenced by a number of factors, including regulatory changes, world events, and the general level of economic activity.[30]

Net Asset Value (''NAV'')

The Trust's NAV is calculated by taking the current market value of its total assets, less any liabilities of the Trust, and dividing that total by the total number of outstanding Shares. The Administrator will calculate the NAV of the Trust once each Exchange trading day. The NAV for a normal trading day will be released after the end of the Core Trading Session, which is typically 4:00 p.m. New York time. The NAV for the Trust's Shares will be disseminated daily to all market participants at the same time. The Administrator will use the settlement price for the Daily EUA Futures established by ICE Endex to calculate the NAV.

II. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEARCA–2023–37 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [31] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] Additional information about EUAs and the operation of the EUA markets can be found in the Notice and in the Registration Statement. *See* Notice, *supra* note 3; Registration Statement, *supra* note 8.

[16] There are two types of European Union (''EU'') emissions allowances: (i) general allowances for stationary installations, or EUAs; and (ii) allowances for the aviation sector, or ''EUAAs.'' The Trust will hold EUAs only. *See* Notice, *supra* note 3, 88 FR at 38110.

[17] *See id.*

[18] *Id.* at 38111.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] 15 U.S.C. 78s(b)(2)(B).

indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[32] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.'' [33]

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[34] in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

- According to the Exchange, the investment objective of the Trust will be for the Shares to reflect the performance of the price of EUAs, and that the Trust intends to achieve its objective by investing all of its assets in EUAs on a non-discretionary basis and will not hold or trade in commodity futures contracts.[35] The Exchange further represents, however, that the Trust is not a proxy for investing in physical carbon credits, and that the Administrator will use the settlement price for the Daily EUA Futures established by ICE Endex to calculate the NAV.[36] What are commenters' views on the Trust's holdings in spot EUAs, on the one hand, and its method of calculating NAV based on the settlement price of Daily EUA Futures, on the other? What are commenters' views on the correlation in pricing between the EUA and Daily EUA Futures markets?
- The Exchange asserts that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201–E. What are commenters' views on whether the proposed Trust and Shares would be susceptible to manipulation? What are commenters' views generally on whether the Exchange's proposal is designed to prevent fraudulent and manipulative acts and practices?

[32] *Id.*

[33] 15 U.S.C. 78f(b)(5).

[34] *See* Notice, *supra* note 3.

[35] *See id.* at 38110.

[36] *See id.; id.* at 38112.

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[37]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by October 3, 2023. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 17, 2023.

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–NYSEARCA–2023–37 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–NYSEARCA–2023–37. 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–NYSEARCA–2023–37 and should be submitted on or before October 3, 2023. Rebuttal comments should be submitted by October 17, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–19591 Filed 9–11–23; 8:45 am]

BILLING CODE 8011–01–P

[37] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[38] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98303; File No. 4–546]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Options Order Protection and Locked/Crossed Market Plan To Add MEMX, LLC, as a Participant

September 6, 2023.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934

(''Act'')[1] and Rule 608 thereunder,[2] notice is hereby given that on August 29, 2023, MEMX, LLC (''MEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') an amendment to the Options Order Protection and Locked/Crossed Market Plan (''Plan'').[3] The amendment adds MEMX as a Participant[4] to the Plan. The Commission is publishing this notice to solicit comments on the amendment from interested persons.

I. Description and Purpose of the Amendment

The Plan requires the options exchanges to establish a framework for providing order protection and addressing locked and crossed markets in eligible options classes. The amendment to the Plan adds MEMX as a Participant. The other Plan Participants are BATS, BOX, BX, C2, CBOE, EDGX, Emerald, ISE, ISE Gemini, ISE Mercury, MIAX, Nasdaq, Pearl, Phlx, NYSE MKT, and NYSE Arca. MEMX has submitted an executed copy of the Plan to the Commission in accordance with the procedures set forth in the Plan regarding new Participants. Section 3(c) of the Plan provides for the entry of new Participants to the Plan. Specifically, Section 3(c) of the Plan provides that an Eligible Exchange[5] may become a Participant in the Plan by: (i) executing a copy of the Plan, as then in effect; (ii) providing each current Participant with a copy of such executed Plan; and (iii) effecting an amendment to the Plan, as specified in Section 4(b) of the Plan.[6]

Section 4(b) of the Plan sets forth the process by which an Eligible Exchange may effect an amendment to the Plan. Specifically, an Eligible Exchange must: (a) execute a copy of the Plan with the only change being the addition of the new Participant's name in Section 3(a) of the Plan; and (b) submit the executed Plan to the Commission. The Plan then provides that such an amendment will be effective when the amendment is approved by the Commission or otherwise becomes effective pursuant to Section 11A of the Act and Rule 608 thereunder.

II. Effectiveness of the Proposed Linkage Plan Amendment

The foregoing Plan amendment has become effective pursuant to Rule 608(b)(3)(iii)[7] because it has been designated as involving solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (a)(1) of Rule 608,[8] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment is consistent with the Act and the rules thereunder. 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 4–546 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number 4–546. 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 4–546 and should be submitted on or before October 3, 2023.

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[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 242.608.

[3] On July 30, 2009, the Commission approved the Plan, which was proposed by Chicago Board Options Exchange, Incorporated (''CBOE''), International Securities Exchange, LLC (''ISE''), The NASDAQ Stock Market LLC (''Nasdaq''), NASDAQ OMX BX, Inc. (''BX''), NASDAQ OMX PHLX, Inc. (''Phlx''), NYSE Amex, LLC (''NYSE Amex''), and NYSE Arca, Inc. (''NYSE Arca''). *See* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009). *See also* Securities Exchange Act Release No. 61546 (February 19, 2010), 75 FR 8762 (February 25, 2010) (adding BATS Exchange, Inc. (''BATS'') as a Participant); 63119 (October 15, 2010), 75 FR 65536 (October 25, 2010) (adding C2 Options Exchange, Incorporated (''C2'') as a Participant); 66969 (May 12, 2015), 77 FR 29396 (May 17, 2012) (adding BOX Options Exchange LLC (''BOX Options'') as a Participant); 70763 (October 28, 2013), 78 FR 65740 (November 1, 2013) (adding Topaz Exchange, LLC (''Topaz'') as a Participant); 70762 (October 28, 2013), 78 FR 65733 (November 1, 2013) (adding MIAX International Securities Exchange, LLC (''MIAX'') as a Participant); 76823 (January 5, 2016), 81 FR 1260 (January 11, 2016) (adding EDGX Exchange, Inc. (''EDGX'') as a Participant); 77324 (March 8, 2016), 81 FR 13425 (March 14, 2016) (adding ISE MERCURY, LLC (''ISE Mercury'') as a Participant); 79896 (January 30, 2017), 82 FR 9264 (February 3, 2017)(adding MIAX Pearl ''Pearl'') as a Participant); 85229 (March 1, 2019), 84 FR 8347 (March 7, 2019) (adding MIAX Emerald, LLC (''Emerald'') as a Participant).

[4] The term ''Participant'' is defined as an Eligible Exchange whose participation in the Plan has become effective pursuant to Section 3(c) of the Plan.

[5] Section 2(6) of the Plan defines an ''Eligible Exchange'' as a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, 15 U.S.C. 78f(a), that: (a) is a ''Participant Exchange'' in the Options Clearing Corporation (''OCC'') (as defined in OCC By-laws, Section VII); (b) is a party to the Options Price Reporting Authority (''OPRA'') Plan (as defined in the OPRA Plan, Section 1); and (c) if the national securities exchange chooses not to become part to this Plan, is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection. MEMX has represented that it has met the requirements for being considered an Eligible Exchange. *See* letter from Anders Franzon, General Counsel, MEMX, to Vanessa Countryman, Secretary, Commission, dated August 29, 2023.

[6] MEMX has represented that it has executed a copy of the current Plan, amended to include MEMX as a Participant and has sent each current Participant a copy of the executed Plan. *See* letter from Anders Franzon, General Counsel, MEMX, to Vanessa Countryman, Secretary, Commission, dated August 29, 2023.

[7] 17 CFR 242.608(b)(3)(iii).

[8] 17 CFR 242.608(a)(1).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–19592 Filed 9–11–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98304; File No. SR–CBOE–2023–044]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Adopt a Quote Protection Timer

September 6, 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 August 30, 2023, Cboe Exchange, Inc. (''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

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rule 5.32. 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://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), 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 5.32 to adopt a passive quote protection mechanism.

The options market is driven by Market-Maker quotes, and thus Market-Maker quotes are critical to provide liquidity to the market and contribute to price discovery for investors. If Market-Makers do not have sufficient time to refresh their resting quotes (the primary source of liquidity for customers in the market) in response to market updates before executing against incoming interest that has incorporated those market updates, this increased risk of execution at stale prices may cause Market-Makers to widen their quotes to the detriment of investors or otherwise withhold liquidity. This reduced liquidity may reduce execution opportunities or cause executions to occur at worse prices for customers. Further, Market-Makers must comply with various obligations, including to provide continuous electronic quotes and to update quotes in response to market conditions.[3] It takes time for Market-Makers to update quotes in series in their appointed classes, which may not take effect until after faster market participants have updated orders. The Exchange believes it is appropriate to provide Market-Maker quotes with a reasonable amount of protection to allow them to execute at prices reflective of market updates given not only the Exchange-imposed requirements to provide and updates such quotes but also the resources Market-Makers expend to comply with those requirements.

Market-Maker quotes are based generally on pricing models that rely on various factors, including the price of the underlying security and that security's volatility. As these variables change, a Market-Maker's pricing model automatically will enter updates to a number of its bids and offers. Additionally, a Market-Maker's system may also automatically enter orders in response to changes in those variables as part of their market-making activity, such as hedging. As a result, there can be a multitude of instances in which the bids and offers of multiple Market-Makers attempting to update their quotes and submit orders in response to market changes inadvertently interact with each other, which can lead to significant risk and exposure. This may occur, for example, when one Market-Maker's price update system is faster than systems used by other Market-Makers. In this respect, a Market-Maker's system that updates options prices microseconds, or even nanoseconds, faster than another Market-Maker's system may lock or cross its bids (offers) against the other Market-Maker's offers (bids) every time its bid (offer) adjusts to the offer (bid) of the second Market-Maker even if the second Market-Maker's system was also in the process of updating that offer (bid).

For example, suppose three Market-Makers for class XYZ have the following displayed markets:

Market-Maker A: (10) 10.00–10.20 (10)
Market-Maker B: (5) 10.05–10.20 (5)
Market-Maker C: (5) 9.95–10.15 (5)

Each of the Market-Maker's systems identify an increase in the price of stock XYZ, which causes those systems to send updated quotes. However, Market-Maker A, as a result of its own technological investment, has the fastest system, which received the updated price of stock XYZ three microseconds before the systems of the other two Market-Makers, and thus sent its updated quotes to the Exchange three microseconds before the systems of the other two Market-Makers. Market-Maker a sent a revised two-sided market of (10) 10.20–10.40 (10) based on the updated price of XYZ. Because the quotes for Market-Maker A's updated market reached the Exchange before the updated markets of Market-Makers B and C, Market-Maker A's bid will execute against Market-Maker C's offer of 10.15 and Market-Maker B's offer of 10.20, which offers were based on a lower stock price. Market-Maker B's and C's updated markets of (5) 10.25–10.40 (5) and (5) 10.15–10.35 (5) reached the Exchange after this execution, despite those Market-Makers no longer being interested in selling at the price of 10.15 or 10.20. Market-Maker A likely submitted its updated market to display liquidity available for customer prices at an updated price, rather than remove liquidity from other liquidity providers at outdated prices. This could happen contemporaneously in a large number of series within the class, such that instead of locking one quote, Market-Maker A may lock 20 of Market-Maker B's and Market-Maker C's quotes. This may expose each Market-Maker to significant risk due to these unintended executions and prevent orders intended to provide liquidity in the Book from doing so.

[9] 17 CFR 200.30–3(a)(85).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Rule 5.51.

The Exchange understands Market-Makers primarily use bulk message quotes to input and update quote prices for purposes of providing liquidity, as bulk messages allow Market-Makers to update efficiently quotes in multiple series using a single message. To protect these quotes—Market-Makers' primary liquidity source—from inadvertent executions as well as executions at stale prices due to technological disparities between Market-Maker systems, the Exchange adopted the functionality in current Rules 5.6(c)(3) and 5.32(c)(6), which prevents executions of incoming Market-Maker interest against resting Market-Maker interest. The purpose of this functionality is to provide resting Market-Maker quotes with time to update before execution so that executions occur at prices based on then-current market, which the Exchange believes encourages Market-Makers to provide competitive markets on the Exchange. Specifically, Rule 5.32(c)(6) provides that the System cancels or rejects a Cancel Back [4] Book Only [5] bulk message bid (offer) or order bid (offer) (or unexecuted portion) submitted by a Market-Maker with an appointment in the class through a bulk port if it would execute against or lock a resting offer (bid) with a Capacity of M. In other words, a Cancel Back Book Only Market-Maker quote or order submitted through a bulk port will be rejected if it would execute against resting Market-Maker interest. Additionally, pursuant to Rule 5.32(b), the System adjusts the price of a Price Adjust (*i.e.,* an order designated Price Adjust or not designated as Cancel Back) Book Only bulk message quote submitted through a bulk port if, at the time of entry, would lock or cross a resting order or quote with Capacity M.[6] In other words, a Price Adjust Book Only Market-Maker quote or order submitted through a bulk port will rest on the Book at one increment away from a resting order or quote with Capacity M. This functionality is designed to protect resting Market-Maker quotes from executions at potentially stale prices due to technology disparities (1) rather than the intention of Market-Maker quote and order updates to trade against resting Market-Maker quotes (and thus eliminate displayed liquidity) and (2) against incoming Market-Maker orders (that may be submitted for the purpose of providing liquidity or to trade for other Market-Maker purposes, such as hedging) with prices that have incorporated market updates.

The protection in Rule 5.32(c)(6) specifically prevents incoming appointed Market-Maker interest (which may be Book Only and thus otherwise eligible for execution against resting interest on the Book) from executing against resting Market-Maker interest. To further protect liquidity of Market-Makers in appointed classes (which liquidity is subject to quoting obligations, as noted above), Rule 5.6(c)(3) provides that bulk messages used by Market-Makers in non-appointed classes may be Post Only only, which would prevent executions of these incoming quotes against resting interest (including resting appointed Market-Maker interest) in those classes.

This current functionality also recognizes that resting Market-Maker interest needs protection from orders (in addition to quotes) of all users, including non-Market-Makers, as orders submitted through bulk ports by Users other than appointed Market-Makers may also only be Post Only, which again would prevent executions of these incoming orders against resting interest (including resting appointed Market-Maker interest). Given the primary purpose of bulk ports is to allow Market-Makers and other users to provide liquidity to the Book, the Exchange adopted functionality to prevent executions of interest submitted through bulk ports against resting Market-Maker interest due to technological disparities (as demonstrated in the example above to protect the primary liquidity source to the Exchange.

While this current functionality protects resting Market-Maker interest from execution at stale prices against incoming Market-Maker and non-Market-Maker interest submitted through bulk ports, resting Market-Maker interest remains unprotected from Market-Maker orders that may be submitted through non-bulk ports. As noted above, Market-Makers may submit orders for other market-making purposes, such as hedging, which orders can be generated from the same systems generating bulk message quotes. As a result, resting Market-Maker interest remains subject to risk of execution at stale prices against incoming Market-Maker non-bulk port orders due to technological disparities. Given the critical role Market-Makers play in the options market, the Exchange believes it is imperative to have the ability to protect Market-Makers' resting quotes from execution at stale prices against incoming Market-Maker interest resulting from technological disparities between Market-Makers. The Exchange believes it should be able to extend this protection to incoming interest from Market-Makers, regardless of the type of port through which it was submitted, as it can expose Market-Makers to the same level of risk. Ultimately, this exposure may negatively impact liquidity to the detriment of the entire market. Unlike quotes and orders submitted through bulk ports, the primary purpose of which is generally to rest on the Book and provide liquidity, it is likely the intention of orders submitted through non-bulk ports to execute against the resting interest (including Market-Maker quotes). As a result, the Exchange believes it is important to balance the need to protect resting Market-Maker quotes from executions at stale prices with the need to provide opportunities for this incoming interest to execute against those quotes.

The proposed rule change proposes to adopt a quote protection timer (''QPT'') to provide the Exchange with the ability to provide Market-Maker quotes with this additional protection. The purpose of QPT is to provide Market-Makers with opportunities to update the prices of their resting quotes prior to execution against aggressing non-bulk port incoming Market-Maker interest while still providing that incoming interest with the opportunity to execute against resting liquidity. Specifically, the Exchange proposes to adopt Rule 5.32(h), which provides the Exchange with the ability to determine on a class basis to activate a QPT. In a class in which the Exchange has activated the QPT, if an incoming order (including an incoming complex order legging into the Book pursuant to Rule 5.33(g), but excluding paired orders, orders (or unexecuted portions) that routed to another exchange(s), and orders routed from PAR) enters the Book [7] in that class

[4] A ''Cancel Back'' order is an order (including a bulk message) designated to not be subject to the price adjust process pursuant to Rule 5.32 (as described below) that the System cancels or rejects if displaying the order on the Book would create a locked or crossed market or if the order cannot otherwise be executed or displayed in the Book at its limit price. *See* Rule 5.6(c) (definition of ''Cancel Back'').

[5] A ''Book Only'' order is an order the System ranks and executes pursuant to Rule 5.32, subjects to the price adjust process pursuant to Rule 5.32, or cancels, as applicable (in accordance with User instructions), without routing away to another exchange. *See* Rule 5.6(c) (definition of ''Book Only'').

[6] Rule 5.32(b) describes additional price adjust scenarios, but these scenarios are not relevant to the proposed rule change.

[7] This includes Immediate-or-Cancel (''IOC'') orders and Intermarket Sweep Orders (''ISOs''). *See* Rule 5.6(c). Contingent orders (*i.e.,* stop, stop-limit, market-on-close, and limit-on-close) are excluded from the QPT (except for market-on-close and limit-on-close orders submitted to the Exchange within the specified amount of time set by the Exchange pursuant to Rule 5.6(d), as they would just be market or limit orders at that point), as by definition these orders are not executable upon entry (they

Continued

with Capacity M that a User submitted through a non-bulk port (the ''initial aggressor order'') and that is marketable against a resting bulk message quote (except for a quote offer a price equal to the minimum increment for the class) [8] with Capacity M (the ''initial protected quote'') at the time the initial aggressor order enters the Book, the initial aggressor order executes against any resting orders and quotes with a Capacity other than M at the same price as the initial protected quote.[9] After that, as set forth in proposed Rule 5.32(h)(2), except for a non-ISO IOC order for which the Trading Permit Holder (''TPH'') opts out of QPT (in which case the System cancels any portion of the order not executed pursuant to proposed subparagraph (1)),[10] the System initiates the QPT,[11] the start time of which is the time when the initial aggressor order enters (or a complex order [12] Legs into) the Book (the ''quote protection period''), provided if there is an ongoing QPT in every leg of a complex order that Legs into the Book, the length of the QPT for the complex order equals the longest remaining time of the leg QPTs.[13]

The Exchange believes it is reasonable to permit the Exchange to determine whether to activate QPT on a class basis to address market structure differences that apply to different classes. This is consistent with other Exchange functionality, such as auctions, which the Exchange may activate on a class basis.[14] For example, in classes in which there is high retail customer order volume, the Exchange believes Market-Makers may be willing to accept additional execution risk for the additional opportunities to execute against a significant number of customer orders, which may ultimately offset any stale-priced executions against faster-acting professional customers. To the contrary, in low volume classes or classes comprised mostly of professional investor volume, the execution risk is greater as there are fewer potential executions against customers to offset the risk. Additionally, in classes with smaller minimum increments, the execution risk is higher because Market-Maker quote updates may be more granular and thus more frequent. Therefore, in a non-penny class, a ''stale'' execution price may be wider than it might be in a penny class and thus still within a Market-Maker's pricing parameters and risk profile. The Exchange notes it does not believe this class flexibility is necessary for its current protection functionality (which applies to all classes), as the Exchange understands Market-Makers primarily use bulk port functionality to provide liquidity and satisfy their quoting obligations. As there are Market-Makers appointed to all classes trading on the Exchange, the Exchange believes it is appropriate to prevent this interest (orders and bulk messages) submitted through bulk ports in all classes from executing against resting Market-Maker interest, as much of the incoming interest was likely submitted to rest on the Book (and satisfy quoting obligations to provide liquidity to the market) rather than execute upon entry.

The Exchange also believes limiting the proposed rule change to orders of Market-Makers (Capacity M) is appropriate because it is consistent with current and prior functionality, which protected resting Market-Maker interest from incoming Market-Maker interest.[15] As noted above, Market-Maker systems may automatically generate order and quote updates in response to market changes. The Exchange believes resting Market-Maker interest should be protected from stale execution against all incoming Market-Maker interest generated by those same systems, regardless of the type of port through which the interest is submitted.

Pursuant to proposed Rule 5.32(h)(3), during the quote protection period, neither the initial aggressor order (or unexecuted portion) nor any other incoming marketable orders with Capacity M received during the quote protection period (together with the initial aggressor order, the ''aggressor orders'') may execute against the protected quote or any other contra-side bulk message quotes with Capacity M that enter the Book (together with the initial protected quote, the ''protected quotes''), and the System ranks (in time priority) and displays the aggressor orders at one minimum price variation below (above) the price of the displayed protected offer (bid).[16] In other words, during the quote protection period, no aggressor orders may execute against protected quotes resting in the Book. Therefore, all aggressor orders in a series that are entered during an ongoing quote protection period are similarly prevented from executing against any protected quote (whether

become executable once the applicable contingency is satisfied), so it is unnecessary to prevent from immediate execution against resting Market-Maker quotes. The Exchange believes the proposed exclusions are appropriate, as they would by definition provide resting quotes with time to update before potential execution. For example, paired orders would go through an auction (such as pursuant to Rule 5.37 or 5.38 (the automated improvement mechanism for simple and complex orders)), during which Market-Maker quotes could update before they would potentially execute against those orders after the auction. Similarly, if an order routes away to another exchange because that exchange has better prices available than those on the Exchange, by the time any portion of that order comes back to the Exchange for execution against the Book, any resting Market-Maker quotes could have been updated before executing against that returned order. Likewise, if an order routes from PAR for electronic execution, it would have first been handled by a person on the trading floor after entry and before execution against interest in the Book, giving quotes sufficient time for update before potential execution against that order.

[8] The Exchange believes this exclusion is appropriate, as there would be no price at which an incoming bid could adjust to and rest during the quote protection period if the resting offer is equal to the minimum increment for the class. For example, if the minimum increment for a class is $0.05, and the market is $0–$0.05 on the Exchange, if an incoming order is priced at $0.05, as further described below, during the quote protection period, the price of the order is adjusted to one increment below the offer to prevent a locked market. However, that would make the adjusted price of the incoming order $0, which is not a permissible price for an order.

[9] *See* proposed Rule 5.32(h)(1).

[10] The Exchange believes it is appropriate to permit TPHs to opt out of QPT for their non-ISO IOC orders (and just have them execute against any resting interest with a Capacity other than M, cancelling any remainder) because it is consistent with the IOC instruction, pursuant to which a user desires execution in whole or in part as soon as the System receives it. *See* Rule 5.6(d) (definition of IOC time-in-force instruction).

[11] The Exchange determines the length of the timer in microseconds on a class basis, which may not exceed five milliseconds. The Exchange believes this flexibility is reasonable so it can apply a timer length that appropriately reflects market structure differences among classes, as discussed above regarding why it is appropriate to provide the Exchange with flexibility to determine whether to apply QPT on a class basis. The Exchange has this same flexibility for other Exchange functionality, such as auction timers. *See, e.g.,* Rule 5.37(c)(3) (providing the Exchange with flexibility to determine the length of an AIM auction period on a class basis).

[12] The Exchange understands complex orders may similarly cause executions against protected quotes due to technical disparities in the same manner as simple orders.

[13] The Exchange believes this is appropriate, as the resting quotes in each leg of the complex order that are intended to be protected by this proposed functionality will be subject to the full length of the quote protection period before the legs of the complex order in this scenario can execute against them.

[14] *See, e.g.,* Rule 5.37(a)(1) (permitting the Exchange to determine in which classes orders may be submitted into an automated improvement mechanism (''AIM'') auction for potential price improvement).

[15] The Exchange notes current functionality also prevents execution of orders with Capacities other than M against resting Market-Maker quotes. *See* Rule 5.5(c)(3) (requiring users other than appointed Market-Makers to submit orders through bulk ports as Post Only, which cannot execute upon entry against resting interest). If the Securities and Exchange Commission (''Commission'') approves the proposed rule change, the Exchange may determine to submit a separate rule filing to propose to extend QPT to other Capacities.

[16] This is similar to the Exchange's Price Adjust functionality (see Rule 5.32(b)), which prevents the Exchange from disseminating a locked or crossed market.

the initial protected quote or any protected quote in that series that is entered during the quote protection period and rests on the Book). Additionally, by having incoming aggressor orders ''join'' the initial aggressor order and incoming protected quotes ''join'' the initial protected quotes, a series with protected quotes will be subject to a full quote protection period for the protected quotes in that series.

The TPH that submitted any aggressor order during the quote protection period, or the Market-Maker that submitted any protected quote during the quote protection period, may update the price of its order or quote, as applicable; however, those orders and quotes remain firm at their displayed prices in accordance with Rule 5.59 until updated. Therefore, aggressor orders and protected quotes may continue to execute at their resting prices (which is an adjusted price with respect to aggressor orders, as described above) against incoming interest. This provides other interest that enters the Book during the quote protection period with potential execution opportunities. Specifically:

- an incoming order with a Capacity other than M (''non-aggressor order'') executes against resting contra-side interest at its displayed price in accordance with the allocation algorithm applicable to the class;
- an incoming aggressor order executes against resting non-protected quote contra-side interest at its adjusted price in accordance with the allocation algorithm applicable to the class; and
- an incoming contra-side order or quote executes against resting aggressor and non-aggressor orders at their displayed prices in accordance with the allocation algorithm applicable to the class.

If (a) for simple orders, there are no more protected quotes at the initial prices of any price-adjusted aggressor orders, the System unadjusts the prices of the aggressor buy (sell) orders to one minimum price variation below (above) the next lowest (highest) priced protected quote (to their limit prices); or (b) for complex orders, the SBO (SBB) increases (decreases), the System unadjusts the prices of the aggressor buy (sell) complex orders to one minimum variation below (above) the then-current SBO (SBB) (to their limit prices).

Proposed Rule 5.32(h)(4) provides at the conclusion of the quote protection period, the System unadjusts the prices of the aggressor orders (or unexecuted portions) to their initial prices, which then execute (in time priority) against any remaining marketable contra-side interest, including the protected quotes, in accordance with the allocation algorithm applicable to the class; [17] and any unexecuted portions of aggressor orders rest on the Book and unexecuted portions of protected quotes remain on the Book.[18]

The Exchange believes the proposed rule change to delay execution of resting Market-Maker quotes against incoming aggressor Market-Maker interest is appropriate, rather than prevention of execution (as occurs in current functionality described above), because as noted above, unlike interest submitted through bulk ports (the primary purpose of which is to provide liquidity on the Book), the primary purpose of orders submitted through non-bulk ports is to execute against interest resting on the Book.[19] Therefore, the Exchange believes it is important to provide this incoming interest with execution opportunities, after a slight delay, to provide Market-Makers with opportunities to effect their quote updates. Additionally, execution of bulk messages (which may only be submitted through bulk ports) exposes Market-Makers to increased risk compared to order execution. For example, the System will not determine whether a Market-Maker's risk monitor mechanism [20] thresholds have been exceeded until all quotes within a bulk message have been processed, unlike orders, which may result in execution in only one series before the System determines whether those thresholds have been exceeded. The Exchange believes the proposed rule change will close a gap that currently exposes Market-Maker liquidity resting on the Book to executions at potentially stale prices due to technology disparities against the orders submitted by Market-Makers through non-bulk ports. The quote protection timer will provide a balance between protecting resting Market-Maker quotes in order to maintain liquidity and providing incoming Market-Maker interest with execution opportunities.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[21] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [22] 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) [23] 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 the proposed rule change will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a national market system, and protect investors. The proposed rule change is intended to prevent incoming Market-Maker orders submitted through non-bulk ports from immediately executing against resting Market-Maker interest at potentially stale prices due to technological disparities between Market-Makers. The Exchange believes the proposed functionality will reduce execution of resting Market-Maker interest at prices that do not reflect the then-current market, which executions may impede certain liquidity providers' ability to competitively price their bids and offers. Specifically, this increased risk of execution at stale prices may cause Market-Makers to widen their quotes or otherwise withhold liquidity to the detriment of investors. The Exchange expects the proposed rule change to increase liquidity and enhance competition in the market, because Market-Makers may be able to quote more aggressively with less concern about exposure to execution risk due to technological disparities in their quoting systems compared to other

[17] *See* Rule 5.33(a).

[18] If the market closes or the Exchange halts trading in the affected series prior to the conclusion of the quote protection period, the QPT concludes without execution.

[19] It is possible some liquidity providers, including Market-Makers, are submitting orders through non-bulk ports for the provision of liquidity, but the Exchange believes this represents a small portion of non-bulk port order flow.

[20] *See* Rule 5.34(c)(4), pursuant to which a user's (including a Market-Maker's) interest may be cancelled after that user's risk limits have been exceeded. As a result, quotes in a bulk message will complete executions before determination of whether a user's risk limits have been exceeded. This makes execution risk of bulk message greater than an order, which only has a bid or offer for one series.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] *Id.*

market participants' order entry systems. As a result, the Exchange believes this protection for resting Market-Maker interest, and resulting increased liquidity and competition, would ultimately remove impediments to the market and benefit all investors.

Given the critical role Market-Makers play in the options market, the Exchange believes it is imperative to have the ability to protect Market-Makers' resting quotes from execution at stale prices against incoming Market-Maker interest due to technological disparities between Market-Makers. The Exchange believes it should be able to extend this protection to incoming Market-Maker interest from non-bulk ports, as technological disparities between Market-Makers can expose Market-Makers to the same level of risk regardless of which type of port Market-Makers submit interest. Ultimately, this exposure to risk from may negatively impact liquidity to the detriment of the entire market. Unlike quotes and orders submitted through bulk ports, the primary purpose of which is generally to rest on the Book and provide liquidity, it is likely the intention of orders submitted through non-bulk ports to execute against the resting interest (including Market-Maker quotes). As a result, the Exchange believes it is important to balance the need to protect resting Market-Maker quotes from executions at stale prices with the need to provide opportunities for this incoming interest to execute against those quotes. The Exchange believes the proposed rule change to slightly delay execution of certain aggressing interest provides an equitable balance between the need to protect resting Market-Maker interest and provide incoming interest with execution opportunities.

The Exchange believes the proposed rule change is not designed to permit unfair discrimination by providing the Exchange with the ability to provide Market-Maker quotes with additional protection. The options market is driven by Market-Maker quotes, and thus Market-Maker quotes are critical to provide liquidity to the market and contribute to price discovery for investors. If Market-Makers do not have sufficient time to refresh their resting quotes (the primary source of liquidity for customers in the market) in response to market updates before executing against incoming interest that has incorporated those market updates, this increased risk of execution at stale prices may cause Market-Makers to widen their quotes to the detriment of investors or otherwise withhold liquidity. This reduced liquidity may reduce execution opportunities or cause executions to occur at worse prices for customers. Further, Market-Makers must comply with various obligations, including to provide continuous electronic quotes and to update quotes in response to market conditions.[24] It takes time for Market-Makers to update quotes in series in their appointed classes, which may not take effect until after faster market participants have updated orders. The Exchange believes it is appropriate to provide Market-Maker quotes with a reasonable amount of protection (as the proposed rule change would provide) to allow them to execute at prices reflective of market updates given the Market-Makers' need to comply with these obligations and the resources they expend to comply with these obligations.[25] As described above, the protected quotes and aggressor orders will remain firm during the quote protection period, and executions will continue during that period.

Further, the Exchange believes the proposed rule change to provide the Exchange with flexibility to determine whether to enable QPT on a class basis, and in such classes to provide the Exchange with flexibility to determine the length of the quote protection period, is not designed to permit unfair discrimination. The Exchange believes this flexibility is appropriate to address market structure differences, including differences among market participants and activity levels, within different classes, which flexibility the Exchange has with respect to other functionality, such as auctions.[26] For example, in classes in which there is high retail customer order volume, the Exchange believes Market-Makers may be willing to accept additional execution risk for the additional opportunities to execute against a significant number of customer orders, which may ultimately offset any stale-priced executions against faster-acting professional customers. To the contrary, in low volume classes or classes comprised mostly of professional investor volume, the execution risk is greater as there are fewer potential executions against customers to offset the risk. Additionally, in classes with smaller minimum increments, the execution risk is higher because Market-Maker quote updates may be more granular and thus more frequent. Therefore, in a non-penny class, a ''stale'' execution price may be wider than it might be in a penny class. The Exchange notes it does not believe this class flexibility is necessary for its current protection functionality (which applies to all classes), as the Exchange understands Market-Makers primarily use bulk port functionality to provide liquidity and satisfy their quoting obligations. As there are Market-Makers appointed to all classes trading on the Exchange, the Exchange believes it is appropriate to prevent this interest (orders and bulk messages) submitted through bulk ports in all classes from executing against resting Market-Maker interest, as much of the incoming interest was likely submitted to rest on the Book (and satisfy quoting obligations to provide liquidity to the market) rather than execute upon entry.

The Exchange also believes limiting the proposed rule change to orders of Market-Makers (Capacity M) is appropriate because it is consistent with current and prior functionality, which protected resting Market-Maker interest from incoming Market-Maker interest.[27] As noted above, Market-Maker systems may automatically generate order and quote updates in response to market changes. The Exchange believes resting Market-Maker interest should be protected from stale execution against all incoming Market-Maker interest generated by those same systems, regardless of the type of port through which the interest is submitted. Therefore, the Exchange believes the proposed rule change to close this current gap exposing resting Market-Maker interest to execution risk against incoming Market-Maker interest submitted through non-bulk ports due to technological disparities will remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

The Exchange notes the underlying purpose of this proposed rule change, which is to provide resting Market-Maker quotes with time to update in response to market condition changes, is the same as the primary purpose of functionality and previously available

[24] *See* Rule 5.51.

[25] *See id.*

[26] *See, e.g.,* Rule 5.37(a)(1) (permitting the Exchange to determine in which classes orders may be submitted into an AIM auction for potential price improvement) and (c)(3) (permitting the Exchange to determine the length of the AIM auction period on a class basis).

[27] The Exchange notes current functionality also prevents execution of orders with Capacities other than M against resting Market-Maker quotes. *See* Rule 5.5(c)(3) (requiring users other than appointed Market-Makers to submit orders through bulk ports as Post Only, which cannot execute upon entry against resting interest). If the Securities and Exchange Commission (''Commission'') approves the proposed rule change, the Exchange may determine to submit a separate rule filing to propose to extend QPT to other Capacities.

on the Exchange.[28] The Exchange believes the proposed rule change to delay execution of resting Market-Maker quotes against incoming aggressor interest is appropriate, rather than prevention of execution (as occurs in current functionality described above), because as noted above, unlike interest submitted through bulk ports (the primary purpose of which is to provide liquidity on the Book), the primary purpose of orders submitted through non-bulk ports is to execute against interest resting on the Book.[29] Therefore, the Exchange believes it is important to provide this incoming interest with execution opportunities, after a slight delay, to provide Market-Makers with opportunities to effect their quote updates. Additionally, execution of bulk messages (which may only be submitted through bulk ports) exposes Market-Makers to increased risk compared to order execution. For example, the System will not determine whether a Market-Maker's risk monitor mechanism [30] thresholds have been exceeded until all quotes within a bulk message have been processed, unlike orders, which may result in execution in only one series before the System determines whether those thresholds have been exceeded. The Exchange believes the proposed rule change will close a gap that currently exposes Market-Maker liquidity resting on the Book to executions at potentially stale prices due to technology disparities against Market-Maker orders submitted through non-bulk ports. The quote protection timer will provide a balance between protecting resting Market-Maker quotes in order to maintain liquidity and providing incoming interest with execution opportunities.

The proposed temporary adjustment of aggressor order prices will further perfect the mechanism of a free and open market and national market system, as it will prevent the display of a locked or crossed market consistent with the Linkage Plan.[31] This proposed handling of these orders is also consistent with the Exchange's current Price Adjust functionality.[32]

As noted above, the options market is driven by Market-Maker quotes, and thus Market-Maker quotes are critical to provide liquidity to the market and contribute to price discovery for investors. The proposed functionality is designed to permit the Exchange to provide Market-Makers with further protection against executions at potentially stale prices due to technology disparities while still providing incoming Market-Maker orders submitted through non-bulk ports with execution opportunities. The Exchange believes the proposed enhanced functionality will permit liquidity providers to more efficiently enter and update bids and offers. This may cause Market-Makers to quote tighter and deeper markets, which will increase liquidity and enhance competition to the ultimate benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will apply in the same manner to all incoming Market-Maker orders in non-bulk ports. The primary purpose of the proposed rule change is to permit the Exchange to provide additional protection to resting Market-Maker quotes from executions against incoming Market-Maker interest at potentially stale prices before they have the opportunity to update in response to market condition changes. The Exchange believes it is reasonable to provide additional protection to Market-Makers given their unique and critical role in the options market and the various obligations that Market-Makers must satisfy, as discussed above. Additionally, as noted above, the proposed functionality supplements similar functionality currently available on the Exchange, which similarly protects resting Market-Maker interest against executions at potentially stale prices.[33] The Exchange does not believe the proposed flexibility to apply QPT on a class basis, or determine the length of the timer on a class basis, will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as such flexibility is reasonable to address market structure differences among classes, as discussed above.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it applies solely to the timing of executions against resting Market-Maker quotes on the Exchange. As noted above, the proposed rule change is consistent with the Linkage Plan.[34]

Additionally, the Exchange believes the proposed rule change will relieve any burden on, or otherwise promote, competition. As discussed above, the Exchange believe the proposed rule change may encourage the provision of more aggressive liquidity, which may result in more trading opportunities and tighter spreads, which contributes to price discovery. This may improve overall market quality and enhance competition on the Exchange.

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

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:

[28] *See* Rules 5.5(c)(3) and 5.32(c)(6); *see also* Securities Exchange Act Release Nos. 86374 (July 15, 2019), 84 FR 34963 (July 19, 2019) (SR–CBOE–2019–033) (adoption of current Rules 5.5(c)(3) and 5.32(c)(6)); and 51822 (June 10, 2005), 70 FR 35321 (June 17, 2005) (SR–CBOE–2004–87) (adoption of former Cboe Rule 6.45(c)).

[29] It is possible some liquidity providers, including Market-Makers, are submitting orders through non-bulk ports for the provision of liquidity, but the Exchange believes this represents a small portion of non-bulk port order flow.

[30] *See* Rule 5.34(c)(4), pursuant to which a user's (including a Market-Maker's) interest may be cancelled after that user's risk limits have been exceeded. As a result, quotes in a bulk message will complete executions before determination of whether a user's risk limits have been exceeded. This makes execution risk of bulk message greater than an order, which only has a bid or offer for one series.

[31] *See* Rule 5.66.

[32] *See* Rule 5.32(g).

[33] *See* Rule 5.32(c)(6).

[34] *See* Rule 5.66.

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–CBOE–2023–044 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–CBOE–2023–044. 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–CBOE–2023–044 and should be submitted on or before October 3, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–19593 Filed 9–11–23; 8:45 am]

BILLING CODE 8011–01–P

[35] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18114 and #18115; OREGON Disaster Number OR–00138]

Presidential Declaration of a Major Disaster for Public Assistance Only for the Burns Paiute Tribe

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Burns Paiute Tribe (FEMA–4733–DR), dated 08/28/2023.

Incident: Severe Storm, Flooding, Landslides, and Mudslides.

Incident Period: 06/11/2023 through 06/12/2023.

DATES: Issued on 08/28/2023.

Physical Loan Application Deadline Date: 10/27/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 05/28/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/28/2023, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Area: Burns Paiute Tribe.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 18114 B and for economic injury is 18115 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–19561 Filed 9–11–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18061 and #18062; HAWAII Disaster Number HI–00073]

Presidential Declaration of a Major Disaster for the State of Hawaii

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment to the Presidential declaration of a major disaster for the State of Hawaii (FEMA–4724–DR), dated 08/10/2023.

Incident: Wildfires.

Incident Period: 08/08/2023 and continuing.

DATES: Issued on 08/31/2023.

Physical Loan Application Deadline Date: 10/10/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 05/10/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the President's major disaster declaration for the state of Hawaii, dated 08/10/2023, is hereby amended to include the following areas as adversely affected by the disaster:

Contiguous Counties (Economic Injury Loans Only):

Hawaii: Hawaii, Honolulu, Kauai.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–19560 Filed 9–11–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12176]

Determination Under Section 506(a)(1) of the Foreign Assistance Act of 1961 To Provide Military Assistance to Ukraine

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961 (the ''Act'') (22 U.S.C. 2318(a)(1)) and Presidential Delegation of Authority dated March 3, 2023, I hereby determine that:

• an unforeseen emergency exists which requires immediate military assistance to Ukraine; and

• the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other provision of law.

I, therefore, pursuant to authority delegated to me by the President, direct the drawdown of up to $400 million in defense articles and services of the Department of Defense, and military education and training, under the authority of section 506(a)(1) of the Act to provide assistance to Ukraine. The Department of State will coordinate implementation of this drawdown.

This determination shall be reported to the Congress and published in the **Federal Register**.

Dated: March 3, 2023.

Antony Blinken,

Secretary of State.

Note: This document was received for publication by the Office of the Federal Register on September 6, 2023.

[FR Doc. 2023–19576 Filed 9–11–23; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 12172]

Determination Under Section 506(a)(1) of the Foreign Assistance Act of 1961 To Provide Military Assistance to Ukraine

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961 (the ''Act'') (22 U.S.C. 2318(a)(1)) and Presidential Delegation of Authority dated May 31, 2023, I hereby determine that:

• an unforeseen emergency exists which requires immediate military assistance to Ukraine; and

• the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other provision of law.

I, therefore, pursuant to authority delegated to me by the President, direct the drawdown of up to $300 million in defense articles and services of the Department of Defense, and military education and training, under the authority of section 506(a)(1) of the Act, to provide assistance to Ukraine. The Department of State will coordinate implementation of this drawdown.

This determination shall be reported to the Congress and published in the **Federal Register**.

Dated: May 31, 2023.

Antony Blinken,

Secretary of State.

Note: This document was received for publication by the Office of the Federal Register on September 6, 2023.

[FR Doc. 2023–19580 Filed 9–11–23; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 12175]

Determination Under Section 506(a)(1) of the Foreign Assistance Act of 1961 To Provide Military Assistance to Ukraine

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961 (the ''Act'') (22 U.S.C. 2318(a)(1)) and Presidential Delegation of Authority dated March 20, 2023, I hereby determine that:

• an unforeseen emergency exists which requires immediate military assistance to Ukraine; and

• the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other provision of law.

I, therefore, pursuant to authority delegated to me by the President, direct the drawdown of up to $350 million in defense articles and services of the Department of Defense, and military education and training, under the authority of section 506(a)(1) of the Act to provide assistance to Ukraine. The Department of State will coordinate implementation of this drawdown.

This determination shall be reported to the Congress and published in the **Federal Register**.

Dated: March 20, 2023.

Antony Blinken,

Secretary of State.

Note: This document was received for publication by the Office of the Federal Register on September 6, 2023.

[FR Doc. 2023–19577 Filed 9–11–23; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 12179]

Determination Under Section 506(a)(1) of the Foreign Assistance Act of 1961 To Provide Military Assistance to Ukraine

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961 (the ''Act'') (22 U.S.C. 2318(a)(1)) and Presidential Delegation of Authority dated October 4, 2022, I hereby determine that:

• an unforeseen emergency exists which requires immediate military assistance to Ukraine; and

• the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other provision of law.

I, therefore, pursuant to authority delegated to me by the President, direct the drawdown of up to $625 million in defense articles and services of the Department of Defense, and military education and training, under the authority of section 506(a)(1) of the Act to provide assistance to Ukraine. The Department of State will coordinate implementation of this drawdown.

This determination shall be reported to the Congress and published in the **Federal Register**.

Dated: October 4, 2022.

Antony Blinken,

Secretary of State.

Note: This document was received for publication by the Office of the Federal Register on September 7, 2023.

[FR Doc. 2023–19711 Filed 9–11–23; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 12171]

Determination Under Section 506(a)(1) of the Foreign Assistance Act of 1961 To Provide Military Assistance to Ukraine

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961 (the ''Act'') (22 U.S.C. 2318(a)(1)) and Presidential Delegation of Authority dated June 27, 2023, I hereby determine that:

• an unforeseen emergency exists which requires immediate military assistance to Ukraine; and

• the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other provision of law.

I, therefore, pursuant to authority delegated to me by the President, direct the drawdown of up to $500 million in

defense articles and services of the Department of Defense, and military education and training, under the authority of section 506(a)(1) of the Act, to provide assistance to Ukraine. The Department of State will coordinate implementation of this drawdown.

This determination shall be reported to the Congress and published in the **Federal Register**.

Dated: June 27, 2023.

Antony Blinken,

Secretary of State.

Note: This document was received for publication by the Office of the Federal Register on September 6, 2023.

[FR Doc. 2023–19588 Filed 9–11–23; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice:12178]

Determination Under Section 506(a)(1) of the Foreign Assistance Act of 1961 To Provide Military Assistance to Ukraine

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961 (the ''Act'') (22 U.S.C. 2318(a)(1)) and Presidential Delegation of Authority dated January 6, 2023, I hereby determine that:

• an unforeseen emergency exists which requires immediate military assistance to Ukraine; and

• the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other provision of law.

I, therefore, pursuant to authority delegated to me by the President, direct the drawdown of up to $2.85 billion in defense articles and services of the Department of Defense, and military education and training, under the authority of section 506(a)(1) of the Act to provide assistance to Ukraine. The Department of State will coordinate implementation of this drawdown.

This determination shall be reported to the Congress and published in the **Federal Register**.

Dated: January 6, 2023.

Antony Blinken,

Secretary of State.

Note: This document was received for publication by the Office of the Federal Register on September 6, 2023.

[FR Doc. 2023–19574 Filed 9–11–23; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 12169]

Determination Under Section 506(a)(1) and Section 614(a)(1) of the Foreign Assistance Act of 1961 To Provide Military Assistance to Ukraine

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961 (the ''Act'') (22 U.S.C. 2318(a)(1)) and Presidential Delegation of Authority dated July 7, 2023, I hereby determine that:

• An unforeseen emergency exists which requires immediate military assistance to Ukraine; and

• The emergency requirement cannot be met under the authority of the Arms Export Control Act or any other provision of law.

In addition, pursuant to the authority vested in me by section 614(a)(1) of the Act (22 U.S.C. 2364(a)(1)), and Presidential Delegation of Authority dated July 7, 2023, I hereby determine that it is important to the security interests of the United States to furnish up to $122 million in assistance under the Act to Ukraine without regard to any other provision of the law within the purview of section 614(a)(1) of the Act.

I, therefore, pursuant to authority delegated to me by the President, direct the drawdown of up to $800 million in defense articles and services of the Department of Defense and military education and training under the authority of section 506(a)(1) of the Act to provide assistance to Ukraine. The Department of State will coordinate implementation of this drawdown.

This determination shall be reported to the Congress and published in the **Federal Register**.

Dated: July 7, 2023.

Antony Blinken,

Secretary of State.

[FR Doc. 2023–19590 Filed 9–11–23; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 12174]

Determination Under Section 506(a)(1) of the Foreign Assistance Act of 1961 To Provide Military Assistance to Ukraine

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961 (the ''Act'') (22 U.S.C. 2318(a)(1)) and Presidential Delegation of Authority dated April 19, 2023, I hereby determine that:

• an unforeseen emergency exists which requires immediate military assistance to Ukraine; and

• the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other provision of law.

I, therefore, pursuant to authority delegated to me by the President, direct the drawdown of up to $325 million in defense articles and services of the Department of Defense, and military education and training, under the authority of section 506(a)(1) of the Act to provide assistance to Ukraine. The Department of State will coordinate implementation of this drawdown.

This determination shall be reported to the Congress and published in the **Federal Register**.

Dated: April 19, 2023.

Antony Blinken,

Secretary of State.

Note: This document was received on September 6, 2023, for publication by the Office of the Federal Register.

[FR Doc. 2023–19578 Filed 9–11–23; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 12177]

Determination Under Section 506(a)(1) of the Foreign Assistance Act of 1961 To Provide Military Assistance to Ukraine

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961 (the ''Act'') (22 U.S.C. 2318(a)(1)) and Presidential Delegation of Authority dated January 19, 2023, I hereby determine that:

• an unforeseen emergency exists which requires immediate military assistance to Ukraine; and

• the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other provision of law.

I, therefore, pursuant to authority delegated to me by the President, direct the drawdown of up to $2.5 billion in defense articles and services of the Department of Defense, and military education and training, under the authority of section 506(a)(1) of the Act to provide assistance to Ukraine. The Department of State will coordinate implementation of this drawdown.

This determination shall be reported to the Congress and published in the **Federal Register**.

Dated: January 19, 2023.

Antony Blinken,

Secretary of State.

Note: This document was received for publication by the Office of the Federal Register on September 6, 2023.

[FR Doc. 2023–19575 Filed 9–11–23; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 12170]

Determination Under Section 506(a)(1) of the Foreign Assistance Act of 1961 To Provide Military Assistance to Ukraine

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961 (the ''Act'') (22 U.S.C. 2318(a)(1)) and Presidential Delegation of Authority dated June 13, 2023, I hereby determine that:

- an unforeseen emergency exists which requires immediate military assistance to Ukraine; and
- the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other provision of law.

I, therefore, pursuant to authority delegated to me by the President, direct the drawdown of up to $325 million in defense articles and services of the Department of Defense, and military education and training, under the authority of section 506(a)(1) of the Act, to provide assistance to Ukraine. The Department of State will coordinate implementation of this drawdown.

This determination shall be reported to the Congress and published in the **Federal Register**.

Dated: June 13, 2023.

Antony Blinken,

Secretary of State.

[FR Doc. 2023–19589 Filed 9–11–23; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 12173]

Determination Under Section 506(a)(1) of the Foreign Assistance Act of 1961 To Provide Military Assistance to Ukraine

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961 (the ''Act'') (22 U.S.C. 2318(a)(1)) and Presidential Delegation of Authority dated May 3, 2023, I hereby determine that:

- an unforeseen emergency exists which requires immediate military assistance to Ukraine; and
- the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other provision of law.

I, therefore, pursuant to authority delegated to me by the President, direct the drawdown of up to $300 million in defense articles and services of the Department of Defense, and military education and training, under the authority of section 506(a)(1) of the Act to provide assistance to Ukraine. The Department of State will coordinate implementation of this drawdown.

This determination shall be reported to the Congress and published in the **Federal Register**.

Dated: May 3, 2023.

Antony Blinken,

Secretary of State.

Note: This document was received for publication by the Office of the Federal Register on September 6, 2023.

[FR Doc. 2023–19579 Filed 9–11–23; 8:45 am]

BILLING CODE 4710–25–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 670 (Sub-No. 1)]

Notice of Rail Energy Transportation Advisory Committee Meeting

AGENCY: Surface Transportation Board.

ACTION: Notice of Rail Energy Transportation Advisory Committee meeting.

SUMMARY: Notice is hereby given of a meeting of the Rail Energy Transportation Advisory Committee (RETAC), pursuant to the Federal Advisory Committee Act.

DATES: The meeting will be held on Wednesday, October 18, 2023, at 9:00 a.m. E.T.

ADDRESSES: The meeting will be held at the Surface Transportation Board headquarters at 395 E Street SW, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Kristen Nunnally at (202) 245–0312 or *Kristen.Nunnally@stb.gov.* If you require an accommodation under the Americans with Disabilities Act for this meeting, please call (202) 245–0245 by October 4, 2023.

SUPPLEMENTARY INFORMATION: RETAC was formed in 2007 to provide advice and guidance to the Board, and to serve as a forum for discussion of emerging issues related to the transportation of energy resources by rail. *Establishment of a Rail Energy Transp. Advisory Comm.,* EP 670 (STB served July 17, 2007). The purpose of this meeting is to facilitate discussions regarding issues including rail service, infrastructure planning and development, and effective coordination among suppliers, rail carriers, and users of energy resources. Potential agenda items for this meeting include a rail performance measures review, industry segment updates by RETAC members, and a roundtable discussion.

The meeting, which is open to the public, will be conducted in accordance with the Federal Advisory Committee Act, 5 U.S.C. app. 2; Federal Advisory Committee Management regulations, 41 CFR part 102–3; RETAC's charter; and Board procedures. Further communications about this meeting may be announced through the Board's website at *www.stb.gov.*

Written Comments: Members of the public may submit written comments to RETAC at any time. Comments should be addressed to RETAC, c/o Kristen Nunnally, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001 or *Kristen.Nunnally@stb.gov.*

Authority: 49 U.S.C. 1321, 49 U.S.C. 11101; 49 U.S.C. 11121.

Decided: September 6, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Stefan Rice,

Clearance Clerk.

[FR Doc. 2023–19572 Filed 9–11–23; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2021–0601]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Human Space Flight Requirements for Crew/Space Flight Participants

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on January 30, 2023. The collection involves information demonstrating that a launch

or reentry operation involving human participants will meet the risk criteria and requirement to ensure public safety.

DATES: Written comments should be submitted by October 12, 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 information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Charles Huet by email at: *Charles.huet@faa.gov;* phone: 202–267–7427.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0720.

Title: Human Space Flight Requirements for Crew/Space Flight Participants.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on January 30, 2023 (88 FR 5956). There were no comments. In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The FAA established requirements for human space flight and space flight participants required by the Commercial Launch Amendment of 2004. The information collected is used by the FAA to ensure human space flight requirements compliance by a licensee or permitee with crew or a space flight participant on board a licensed or permitted vehicle.

Respondents: All commercial space entities that propose to conduct a launch or reentry with flight crew or space flight participants on board must comply with this collection.

Frequency: On Occasion.

Estimated Average Burden per Response: 4 Hours.

Estimated Total Annual Burden: 808 Hours.

Issued in Washington, DC.

James A. Hatt,

Space Policy Division Manager, Office of Commercial Space Transportation.

[FR Doc. 2023–19569 Filed 9–11–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0089]

Entry-Level Driver Training: Application for Exemption; Alaska's Ice Road Driving School

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the application from Alaska's Ice Road Driving School requesting an exemption from certain portions of the behind-the-wheel (BTW) entry-level driver training (ELDT) requirements for driver trainees. The applicant explained that because of the unique road system and challenging terrain in Alaska, it is difficult to adhere to the driver training regulations, and further explained that the road configurations lead to only a few major established safe road systems in Alaska. The applicant believes that the road skills test for a Commercial Driver's License (CDL) applicant can safely be administered by the State test examiner because set routes can be established and approved without the CDL applicant completing certain portions of the mandatory BTW training. FMCSA analyzed the application and determined that the exemption would not likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; 202–366–2722 or *richard.clemente@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to *www.regulations.gov,* insert the docket number ''FMCSA–2023–0089'' in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''View Related Comments.''

If you do not have access to the internet, you may view the docket by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, 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.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

Under 49 CFR 383.3(e) the State of Alaska may waive certain knowledge and skills tests requirements and issue restricted CDLs, subject to certain conditions. To be eligible for a restricted CDL under 49 CFR 383.3(e), which is not valid outside Alaska, drivers must operate exclusively over roads that are not connected to the State highway system and are not connected to any highway or vehicular way with an average daily traffic volume greater than 499 (§ 383.3(e)(2)). The Federal Highway Administration, FMCSA's predecessor

agency, set the daily traffic volume limit at 499 in 1996 (54 FR 33230).

The ELDT regulations, implemented on February 7, 2022, and set forth in 49 CFR 380, subparts F and G, established minimum training standards for individuals applying for certain CDLs and defined curriculum standards for theory and BTW training. The ELDT curriculum in 49 CFR part 380, appendix A, section A3.1, requires Class A CDL applicants to demonstrate proficiency in proper techniques for initiating vehicle movement, executing left and right turns, changing lanes, navigating curves at speed, entry and exit on the interstate or controlled access highway, and stopping the vehicle in a controlled manner. Under 49 CFR 380.603(a)(2), drivers issued a restricted CDL by the State of Alaska are exempt from the ELDT requirements.

Applicant's Request

Alaska's Ice Road Driving School seeks an exemption from the requirements, set forth in 49 CFR part 380, Appendices A and B, that driver trainees seeking a Class A or Class B CDL demonstrate proficiency in BTW maneuvers related to entering the on ramp, exiting the off ramp, right turns, and left turns. The applicant states that due to Alaska's unique road system they believe that the exemption would benefit Alaska's driver training schools and give them confidence to take on prospective students and complete the required BTW training safely. Alaska's Ice Road Driving School requests the exemption regarding routing prescriptions that are specific to exact off and on ramps, and right and left turns, adding that it will aid in the safe administration of road tests by the Alaska State Department of Motor Vehicles. The applicant seeks the exemption on behalf of itself and all State and local commercial driving schools in Alaska as well as individuals qualified as third-party testers in the State of Alaska.

IV. Method To Ensure an Equivalent or Greater Level of Safety

Alaska's Ice Road Driving School believes that the specified portions of the ELDT regulation could be waived safely by allowing the school and the State of Alaska to prescribe routes based upon the area in which the road skills exam would be administered. The applicant further believes that the road skills test for a CDL applicant can safely be administered by the State test examiner as set routes can be established and approved without the CDL applicant completing certain portions of the mandatory BTW training.

V. Public Comments

On April 20, 2023, FMCSA published Alaska's Ice Road Driving School's application and requested public comment [88 FR 24463]. The Agency received no comments in response to the notice.

VI. FMCSA Safety Analysis and Decision

FMCSA evaluated Alaska's Ice Road Driving School application and denies the exemption request. The applicant failed to establish that they would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption. Granting the exemption would result in drivers receiving a CDL even though they had not demonstrated proficiency in the three driving skills from which exemption is requested. In addition, on December 28, 2022, the Agency granted an exemption to the State of Alaska [87 FR 79932] which allows the State to waive specified portions of the CDL skills test for drivers in 14 defined geographical areas that lack infrastructure to allow completion of the full skills test. Drivers who receive a restricted CDL under the provisions of the 2022 exemption are also exempt from the ELDT regulations. The relief requested by Alaska's Ice Road Driving School falls within the scope of that exemption to the extent that drivers would not be subject to ELDT requirements if, pursuant to the 2022 exemption, they received a restricted CDL allowing them to operate a commercial motor vehicle only within 14 designated geographical areas of the State. This exemption for the State of Alaska is effective from December 28, 2022, through December 30, 2024. The Agency does not believe it is appropriate to grant a State-wide exemption when the previous exemption provides a targeted solution in 14 specific regions of the State where there are challenges to achieving full compliance with the rules. In addition, there were no comments filed in support of Alaska's Ice Road Driving School's request.

For the above reasons, Alaska's Ice Road Driving School's exemption application is denied.

Earl Stanley Adams, Jr.,

Deputy Administrator.

[FR Doc. 2023–19614 Filed 9–11–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Safety Advisory 2023–04; High-Impact Wheels Causing Damage to Rails and Track Structures

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of safety advisory.

SUMMARY: This Safety Advisory recommends railroads utilize Wheel Impact Load Detectors (WILD) to properly identify and replace high-impact railcar wheels that could cause significant damage to rails and supporting track structures. FRA's preliminary investigation of a recent train derailment in Gothenburg, Nebraska, indicates that high-impact wheels damaged the rail the train was operating over and caused the derailment. Current industry practices for using WILDs to identify and replace high-impact wheels could help prevent such incidents in the future.

FOR FURTHER INFORMATION CONTACT: Mr. Charles P. King, Director, Office of Railroad Infrastructure and Mechanical Equipment, at telephone: 202–329–5031 or email: *Charles.King@dot.gov.*

Disclaimer: This Safety Advisory is considered guidance pursuant to DOT Order 2100.6A (June 7, 2021). Except when referencing laws, regulations, policies, or orders, the information in this Safety Advisory does not have the force and effect of law and is not meant to bind the public in any way. This document does not revise or replace any previously issued guidance.

SUPPLEMENTARY INFORMATION:

Background

In 2015, FRA issued Safety Advisory 2015–01 recommending, among other things, the use of WILDs to improve safety,[1] recognizing the potential value of these wayside detection systems, if they are appropriately installed, maintained, and utilized. FRA recommended railroads continue to install and maintain WILDs along certain routes and monitor their measurements to determine when to replace wheels. In that Safety Advisory, FRA also recommended that railroads lower the impact threshold for action to replace the wheels on any car in a high-hazard flammable train.

WILDs supplement, and do not substitute, the existing wheel

[1] *https://railroads.dot.gov/elibrary/mechanical-inspections-and-wheel-impact-load-detector-standards-trains-transporting-large.*

regulations [2] that focus on preventing broken wheels and other wheel failures. WILD measurements are intended to focus more on the interaction between the wheels and the rail and prevent broken rails and other rail failures. WILDs are designed to measure the impact of a railcar's wheels on the rail and alert the operating railroad and car owner when wheels have a high impact. WILDs measure this impact on the rail in KIPs (1,000 pounds-force). High-impact wheels (generally considered to be more than 90 KIPs) are typically caused by a flat spot or other wheel defect. If not addressed, high-impact wheels can damage rail and track structures and cause a derailment.

On February 21, 2023, 30 freight cars carrying coal derailed in a train in Gothenburg, Nebraska. FRA's preliminary investigation indicates the derailment was likely caused by high-impact wheels breaking a track joint bar. Records from FRA's investigation show one of the freight cars had a WILD measurement of 130.6 KIPs when it operated over the track joint bar that was found broken. Records also show this freight car continued to operate for several months prior to the derailment after its high-impact wheels were identified by WILDs. WILD measurements showed high-impact wheels in November and December 2022, and again in January 2023. During its investigation, FRA also identified eight other freight cars in the derailed train with high-impact wheels.

Recommendations

In light of the Gothenburg, Nebraska, accident, FRA recommends railroads and contractors continue to use WILDs to help identify and replace high-impact wheels according to railroad current industry practices. Specifically, wheels with a WILD measurement greater than 80 KIPs should be replaced when in a repair shop, and wheels with a WILD measurement greater than 90 KIPs should be replaced when found in any other location in service. In addition, railroads should review procedures for identifying dynamic ratios to help predict high-impact wheels when cars are loaded. A dynamic ratio is the ratio of a WILD measurement of a loaded railcar compared to when it is empty. The peak impact is the highest WILD measurement recorded. The impact measurement varies during operation due to the changing operating environment, including changes in speed. Wheels should be replaced when an empty railcar with a dynamic ratio of 5 or higher has a preceding peak impact greater than 100 KIPs. Replacement at such time will reduce or eliminate further damage to the freight car's wheels, rails, and track structures. In addition, FRA recommends railroads and contractors review this Safety Advisory with employees to increase their awareness of the possible consequences of allowing freight cars with high-impact wheels to continue to operate.

Conclusion

FRA encourages all railroad industry members to take actions consistent with the recommendations of this Safety Advisory. FRA may modify this Safety Advisory, issue additional safety advisories, or take other appropriate action necessary to ensure the highest level of safety on the Nation's railroads, including pursuing other corrective measures under its rail safety authority.

Issued in Washington, DC.

Amitabha Bose,

Administrator.

[FR Doc. 2023–19677 Filed 9–11–23; 8:45 am]

BILLING CODE 4910–06–P

[2] *See, e.g.,* 49 CFR 215.103, 229.73, 229.75.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[DOT–OST–2023–0137]

Advisory Committee on Transportation Equity (ACTE); Notice of Public Meeting

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: DOT OST announces a meeting of ACTE, which will take place via videoconference.

DATES: The meeting will be held Friday, September 22, 2023, from 2:30 to 4:30 p.m. Eastern Time. Requests for accommodations because of a disability must be received by Friday, September 15. Requests to submit questions must be received no later than Friday, September 15.

ADDRESSES: The meeting will be held via videoconference. Those members of the public who would like to participate virtually should go to *https://www.transportation.gov/civil-rights/acte/meetinginfo* to access the meeting, a detailed agenda for the entire meeting, meeting minutes, and additional information on ACTE and its activities.

FOR FURTHER INFORMATION CONTACT: Sandra Norman, Senior Advisor, Departmental Office of Civil Rights and Warner Dixon, Special Assistant for Civil Rights, Departmental Office of Civil Rights, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 934–2380, *ACTE@dot.gov.* Any ACTE-related request or submissions should be sent via email to the points of contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Purpose of the Committee

ACTE was established to provide independent advice and recommendations to the Secretary of Transportation about comprehensive, interdisciplinary issues related to civil rights and transportation equity in the planning, design, research, policy, and advocacy contexts from a variety of transportation equity practitioners and community leaders. Specifically, the Committee will provide advice and recommendations to inform the Department's efforts to:

Implement the Agency's Equity Action Plan and Strategic Plan, helping to institutionalize equity into Agency programs, policies, regulations, and activities:

Strengthen and establish partnerships with overburdened and underserved communities who have been historically underrepresented in the Department's outreach and engagement, including those in rural and urban areas:

Empower communities to have a meaningful voice in local and regional transportation decisions; and

Ensure the compliance of Federal funding recipients with civil rights laws and nondiscrimination programs, policies, regulations, and activities.

Meeting Agenda

The agenda for the meeting will consist of:

An inauguration of the ACTE members
An overview of the ACTE charter
An overview of the role and impact of ACTE members
Remarks from Secretary Buttigieg
An overview of ACTE focus areas
A discussion on collaborative approaches and transparency
Concluding remarks

Meeting Participation

Advance registration is required. Please register at *https://www.transportation.gov/civil-rights/acte/meetinginfo* by the deadline referenced in the **DATES** section. The meeting will be open to the public for its entirety. The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because

of a disability, such as sign language, interpretation, or other ancillary aids, please contact the points of contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

Questions from the public will be answered during the public comment period only at the discretion of the ACTE chair, vice chair, and designated Federal officer. Members of the public may submit written comments and questions to the points of contact listed in the **FOR FURTHER INFORMATION CONTACT** section on the topics to be considered during the meeting by the deadline referenced in the **DATES** section.

Dated: September 7, 2023.

Irene Marion,

Director, Departmental Office of Civil Rights.

[FR Doc. 2023–19661 Filed 9–11–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of a person that has been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of this person are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See Supplementary Information section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea 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 Compliance, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://ofac.treasury.gov*).

Notice of OFAC Actions

On September 6, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person is blocked under the relevant sanctions authority listed below.

Individual

1. DAGALO, Abdelrahim Hamdan (a.k.a. DAGLO MOUSA, Abdul Rahim Hamdan; a.k.a. DAGLO MUSA, Abdelrahim Hamdan; a.k.a. ''DAGLO, Abdelraheem''), Khartoum, Sudan; DOB 01 Jan 1972; nationality Sudan; citizen Sudan; Gender Male (individual) [SUDAN–EO14098].

Designated pursuant to section 1(a)(ii)(A) of Executive Order 14098 of May 4, 2023, ''Imposing Sanctions on Certain Persons Destabilizing Sudan and Undermining the Goal of a Democratic Transition,'' for being a foreign person who is or has been a leader, official, senior executive officer, or member of the board of directors of the Rapid Support Forces, an entity that has, or whose members have been responsible for, or complicit in, or to have directly or indirectly engaged or attempted to engage in actions or policies that threaten the peace, security, or stability of Sudan relating to the tenure of such leader, official, senior executive officer, or member of the board of directors.

Designated pursuant to section 1(a)(ii)(A) of Executive Order 14098 of May 4, 2023, ''Imposing Sanctions on Certain Persons Destabilizing Sudan and Undermining the Goal of a Democratic Transition,'' for being a foreign person who is or has been a leader, official, senior executive officer, or member of the board of directors of the Rapid Support Forces, an entity that has, or whose members have, been responsible for, or complicit in, or have directly or indirectly engaged or attempted to engage in the targeting of women, children, or any other civilians through the commission of acts of violence (including killing, maiming, torture, or rape or other sexual violence), abduction, forced displacement, or attacks on schools, hospitals, religious sites, or locations where civilians are seeking refuge, or through conduct that would constitute a serious abuse or violation of human rights or a violation of international humanitarian law relating to the tenure of such leader, official, senior executive officer, or member of the board of directors.

Dated: September 6, 2023.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–19638 Filed 9–11–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before October 12, 2023 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Financial Crimes Enforcement Network (FinCEN)

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 1506–0062.

Type of Review: Extension without change of a currently approved collection.

Description: Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. In order to work continuously to ensure that our programs are effective and meet our customers' needs, the Financial Crimes Enforcement Network (hereafter the Agency) seeks to obtain OMB approval of a generic clearance to collect qualitative feedback on our service delivery. By qualitative feedback, we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study.

Form: None.

Affected Public: Business or other for-profit institutions, and non-profit institutions.

Estimated Number of Respondents: 15,000.

Frequency of Response: Once.

Estimated Total Number of Annual Responses: 15,000.

Estimated Time per Response: 40 minutes (average).

Estimated Total Annual Burden Hours: 10,000.

(Authority: 44 U.S.C. 3501 *et seq.*)

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2023–19658 Filed 9–11–23; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Request for Expressions of Interest in Membership on the Federal Insurance Office's Advisory Committee on Risk-Sharing Mechanisms

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Federal Insurance Office (FIO) within the Department of the Treasury invites the public to submit expressions of interest in serving as members of the Advisory Committee on Risk-Sharing Mechanisms (ACRSM). Submissions must be received by FIO no later than October 15, 2023.

FOR FURTHER INFORMATION CONTACT: Annette Burris, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, Department of the Treasury, 1500 Pennsylvania Ave. NW, Room 1410 MT, Washington, DC 20220, at (771) 215–6900 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background. The ACRSM is a Federal advisory committee of insurance industry representatives established in 2015 to provide advice and recommendations to the Federal Insurance Office (FIO) with respect to (1) the creation and development of non-governmental, private market risk-sharing mechanisms for protection against losses arising from acts of terrorism; and (2) FIO's administration of the Terrorism Risk Insurance Program.[1] Assisting the Secretary of the Treasury in the administration of the Terrorism Risk Insurance Program is among FIO's duties and authorities as set out in Subpart A of the Federal Insurance Office Act of 2010 (31 U.S.C. 313, *et seq.*), title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 12 U.S.C. 5301 *et seq.* (July 21, 2010).

The ACRSM's membership is balanced to include a cross-section of members consisting of directors, officers, or other employees of insurers, reinsurers, and capital market participants that are representative of the affected sectors of the insurance industry, including commercial property insurance, commercial casualty insurance, reinsurance, and alternative risk transfer industries. More information regarding the ACRSM, including a list of its current members, prior recommendations to FIO, and its organizational documents, is available on the Treasury website.[2]

Individuals interested in serving as ACRSM members should submit an expression of interest including their name, organization or affiliation, and contact information (employment address, telephone number, and email address). Submissions should also include a curriculum vitae and a statement describing the individual's interest in serving and willingness to work on the issues addressed by the ACRSM.

A small subset of ACRSM members may be required to adhere to the conflict-of-interest rules applicable to Special Government Employees as such employees are defined in 18 U.S.C. 202(a). These rules include relevant provisions in 18 U.S.C. related to criminal activity, Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635), and Executive Order 12674 (as modified by Executive Order 12731).

In accordance with Department of Treasury Directive 21–03, candidates for appointment to the ACRSM are subject to a clearance process, including fingerprinting, annual tax checks, and a Federal Bureau of Investigation criminal background check. All ACRSM candidates must agree to submit to these pre-appointment checks.

The deadline for submitting expressions of interest is October 15, 2023. Submissions may be sent by email to *ACRSM@treasury.gov* or by mail to: Federal Insurance Office, Room 1410, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220–0002, Attention: ACRSM.

Stephanie Schmelz,

Deputy Director, Federal Insurance Office.

[FR Doc. 2023–19565 Filed 9–11–23; 8:45 am]

BILLING CODE 4810–AK–P

[1] Public Law 114–1, section 110.

[2] *Advisory Committee on Risk-Sharing Mechanisms (ACRSM),* U.S. Department of the Treasury, *home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program/advisory-committee-on-risk-sharing-mechanisms-acrsm.*

FEDERAL REGISTER

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Part II

Securities and Exchange Commission

Joint Industry Plan; Order Approving an Amendment to the National Market System Plan Governing the Consolidated Audit Trail; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98290; File No. 4–698]

Joint Industry Plan; Order Approving an Amendment to the National Market System Plan Governing the Consolidated Audit Trail; Notice

September 6, 2023.

I. Introduction

On March 13, 2023, the Consolidated Audit Trail, LLC (''CAT LLC''), on behalf of the Participants [1] to the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan'' or ''Plan''),[2] filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 11A of the Exchange Act [3] and Rule 608 of Regulation National Market System (''Regulation NMS'') thereunder,[4] a proposed amendment to the CAT NMS Plan (''Proposed Amendment'') to implement a revised funding model (''Executed Share Model'') for the consolidated audit trail (''CAT'') [5] and to establish a fee schedule for Participant CAT fees in accordance with the Executed Share Model (''Proposed Participant Fee Schedule'').[6] The Proposed Amendment was published for comment in the **Federal Register** on March 21, 2023.[7]

On June 16, 2023, the Commission instituted proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS [8] to determine whether to disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment (''OIP'').[9]

This order approves the Proposed Amendment.

II. Background

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the SROs to submit a national market system (''NMS'') plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities.[10] On November 15, 2016, the Commission approved the CAT NMS Plan.[11] Under the CAT NMS Plan, the Operating Committee of the Company, of which each Participant is a member, has the discretion (subject to the funding principles set forth in the Plan) to establish funding for the Company to operate the CAT, including establishing fees to be paid by the Participants and Industry Members.[12]

Under the CAT NMS Plan, CAT fees are to be implemented in accordance with various funding principles, including an ''allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act taking into account . . . distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company resources and operations'' and the ''avoid[ance of] any disincentives such as placing an inappropriate burden on competition and reduction in market quality.'' [13] The Plan specifies that, in establishing the funding of the Company, the Operating Committee shall establish ''a tiered fee structure in which the fees charged to: (1) CAT Reporters [14] that are Execution Venues,[15] including ATSs,[16] are based upon the level of market share; (2) Industry Members' non-ATS activities are based upon message traffic; and (3) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members).'' [17]

On May 15, 2020, the Commission adopted amendments to the CAT NMS Plan designed to increase the Participants' financial accountability for the timely completion of the CAT (''Financial Accountability Amendments'').[18] The Financial Accountability Amendments added Section 11.6 to the CAT NMS Plan to govern the recovery from Industry Members of any fees, costs, and expenses (including legal and consulting fees, costs and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from June 22, 2020 until such time that the Participants have completed Full Implementation of CAT NMS Plan Requirements [19] (''Post-Amendment

[1] The Participants are: BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., The Financial Industry Regulatory Authority, Inc. (''FINRA''), Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange, LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the ''Participants,'' ''self-regulatory organizations,'' or ''SROs'').

[2] The CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Securities Exchange Act of 1934 (''Exchange Act'') and the rules and regulations thereunder. *See* Securities Exchange Act Release No. 78318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''CAT NMS Plan Approval Order''). The CAT NMS Plan is Exhibit A to the CAT NMS Plan Approval Order. *See* CAT NMS Plan Approval Order, 81 FR at 84943–85034. The CAT NMS Plan functions as the limited liability company agreement of the jointly owned limited liability company formed under Delaware state law through which the Participants conduct the activities of the CAT (''Company''). Each Participant is a member of the Company and jointly owns the Company on an equal basis. The Participants submitted to the Commission a proposed amendment to the CAT NMS Plan on August 29, 2019, which they designated as effective on filing. On August 29, 2019, the Participants replaced the CAT NMS Plan in its entirety with the limited liability company agreement of a new limited liability company, CAT LLC, which became the Company. *See* Securities Exchange Act Release No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019). The latest version of the CAT NMS Plan is available at *https://catnmsplan.com/about-cat/cat-nms-plan.*

[3] 15 U.S.C. 78k–1.

[4] 17 CFR 242.608.

[5] The Proposed Amendment modifies the existing funding model in Article XI. of the CAT NMS Plan.

[6] *See* Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Commission (Mar. 13, 2023) (''Transmittal Letter'').

[7] *See* Securities Exchange Act Release No. 97151 (Mar. 15, 2023), 88 FR 17086 (Mar. 21, 2023) (''Notice''). Comments received in response to the Notice can be found on the Commission's website at *https://www.sec.gov/comments/4-698/4-698-a.htm.*

[8] 17 CFR 242.608(b)(2)(i).

[9] *See* Securities Exchange Act Release No. 97750 (June 16, 2023), 88 FR 41142 (June 23, 2023). Comments received in response to the OIP can be found on the Commission's website at *https://www.sec.gov/comments/4-698/4-698-a.htm.*

[10] 17 CFR 242.613.

[11] *See* CAT NMS Plan, *supra* note 2.

[12] The CAT NMS Plan defines ''Industry Member'' as ''a member of a national securities exchange or a member of a national securities association.'' *See* CAT NMS Plan, *supra* note 2, at Section 1.1. *See also id.* at Section 11.1(b).

[13] *Id.* at Section 11.2(b) and (e).

[14] The CAT NMS Plan defines ''CAT Reporter'' as ''each national securities exchange, national securities association and Industry Member that is required to record and report information to the Central Repository pursuant to SEC Rule 613(c).'' *Id.* at Section 1.1.

[15] The CAT NMS Plan defines ''Execution Venue'' as ''a Participant or an alternative trading system ('ATS') (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).'' *Id.*

[16] *Id.*

[17] CAT NMS Plan, *supra* note 2, at Section 11.2(c). *See id.* at Article XI for additional detail.

[18] *See* Securities Exchange Act Release No. 88890, 85 FR 31322 (May 22, 2020).

[19] ''Full Implementation of CAT NMS Plan Requirements'' means ''the point at which the Participants have satisfied all of their obligations to build and implement the CAT, such that all CAT system functionality required by Rule 613 and the CAT NMS Plan has been developed, successfully tested, and fully implemented at the initial Error Rates specified by Section 6.5(d)(i) or less, including functionality that efficiently permits the

Expenses''). Section 11.6 establishes target deadlines for four Financial Accountability Milestones (Periods 1, 2, 3 and 4) [20] and reduces the amount of fee recovery available to the Participants if these deadlines are missed.[21]

III. Discussion and Commission Findings

After careful review, the Commission, pursuant to Section 11A of the Exchange Act,[22] and Rule 608(b)(2) [23] thereunder, is approving the Proposed Amendment. Section 11A of the Exchange Act authorizes the Commission, by rule or order, to authorize or require the self-regulatory organizations to act jointly with respect to matters as to which they share authority under the Exchange Act in planning, developing, operating, or regulating a facility of the national market system.[24] Rule 608 of Regulation NMS authorizes two or more SROs, acting jointly, to file with the Commission proposed amendments to an effective NMS plan,[25] and further provides that the Commission shall approve an amendment to an effective NMS plan if it finds that the amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act.[26]

The Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable. There are a number of potential approaches to allocating the costs of operating the CAT, all of which have relative strengths and weaknesses. In adopting Rule 613 and approving the CAT NMS Plan, the Commission determined that the CAT was appropriate in order to enable the SROs and the Commission to fulfill their responsibilities to oversee the equities and options markets. The CAT NMS Plan requires both Execution Venues (which include the Participants) and Industry Members (which include CAT Executing Brokers) to fund the CAT. The proposed one-third allocation of CAT fees to the applicable Participant in a transaction, the CAT Executing Broker for the buyer in a transaction and the CAT Executing Broker for the seller in a transaction, assesses an equal fee to the three primary roles in a transaction: the buyer, seller and market regulator. In our view, allocating the costs for the CAT among the three parties who play significant roles in transactions reportable to the CAT in this manner represents a reasonable method of allocating costs among the parties who participate in and benefit from those markets.

Commenters expressed concern that the Participant exchanges and FINRA would pass their share of costs on to Industry Members. But the Exchange Act expressly contemplates the ability of the Participants to recoup the costs of fulfilling their statutory obligations under the Exchange Act. And, as we explained in adopting Rule 613 and approving the CAT NMS Plan, the CAT is important to the performance of these regulatory activities in modern, interconnected markets, to the ultimate benefit of investors and market participants. Moreover, these costs will not be unchecked. The Participants must file their proposed rule changes relating to fees with the Commission. Those proposed rule changes are published by the Commission and there is an opportunity for public comment. CAT fees, like any fees the Participants collect from their members to fund their SRO responsibilities in market and member regulation, must be consistent with applicable statutory standards under the Exchange Act, including being reasonable, equitable and not unfairly discriminatory.

We also conclude that the use of executed equivalent share volume provides a reasonable basis for the calculation of these fees. Executed equivalent share volume is readily determinable and—because it is based on trading activity, which impacts CAT costs—provides a reasonable proxy for the costs to CAT, allowing CAT Reporters to be assessed fees corresponding to the cost burden they impose on the CAT. The use of CAT Executing Brokers is also appropriate because the proposed Executed Share Model is based on *executed* equivalent shares (emphasis added). Therefore, charging the CAT Executing Brokers would reflect their executing role in each transaction, which is already recorded in transaction reports from the exchanges and FINRA's equity trade reporting facilities for calculating the CAT fees. Because such entities are already identified and their CAT fees are known, this method could streamline the billing process and allow such entities to calculate their own fees. We also conclude that the division of fees into Prospective CAT Fees and the Historical CAT Assessment provides a reasonable method of allowing Participants to recoup their significant expenditures on the development of CAT to date while ensuring funding for future operations of the system. And the provision of fee calculation information, approach to billing and collection of fees, conforming changes and the Proposed Participant Fee Schedule are all reasonable. The Commission is therefore approving the Proposed Amendment.[27]

A. Funding Model

1. Overview

CAT LLC proposes to replace the funding model set forth in Article XI of the CAT NMS Plan (''Original Funding Model'') with the Executed Share Model. The Original Funding Model involved a bifurcated approach, where costs associated with building and operating the CAT would be borne by (1) Industry Members (other than alternative trading systems (''ATSs'') that execute transactions in Eligible Securities (''Execution Venue ATSs'')) through fixed tiered fees based on message traffic for Eligible Securities, and (2) Participants and Industry Members that are Execution Venue ATSs for Eligible Securities through fixed tiered fees based on market share.[28] In contrast, the Executed Share Model would charge fees based on the executed equivalent share volume of transactions in Eligible Securities.[29] In addition, instead of charging fees to Industry Members, under the Executed Share Model, fees would be charged to each Industry Member that is a CAT Executing Broker [30] for the buyer in a transaction in Eligible Securities (''CAT Executing Broker for the Buyer'' or ''CEBB'') and each Industry Member that is the CAT Executing Broker for the seller in a transaction in Eligible

Participants and the Commission to access all CAT Data required to be stored in the Central Repository pursuant to Section 6.5(a), including Customer Account Information, Customer-ID, Customer Identifying Information, and Allocation Reports, and to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any related allocation information provided in an Allocation Report. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).'' CAT NMS Plan, *supra* note 2, at Section 1.1.

[20] *See* CAT NMS Plan, *supra* note 2, at Section 11.6(a)(i).

[21] *Id.* at Section 11.6(a)(ii) and (iii).

[22] 15 U.S.C. 78k–1.

[23] 17 CFR 242.608(b)(2).

[24] *See* 15 U.S.C. 78k–1(a)(3)(B).

[25] *See* 17 CFR 242.608.

[26] *See* 17 CFR 242.608(b)(2).

[27] *Id.*

[28] *See* CAT NMS Plan, *supra* note 2, at Section 11.3(a) and (b).

[29] *See* Notice, *supra* note 7, 88 FR at 17086.

[30] *See infra* Section III.A.4. for the definition of CAT Executing Broker.

Securities (''CAT Executing Broker for the Seller'' or ''CEBS'').[31]

Under the Executed Share Model, CAT LLC proposes to establish two categories of CAT fees. The first category of CAT fees would be fees (''CAT Fees'') payable by Participants and Industry Members that are CAT Executing Brokers for the Buyer and for the Seller with regard to CAT costs not previously paid by the Participants (''Prospective CAT Costs'').[32] The second category of CAT fees would be fees (''Historical CAT Assessments'') to be payable by Industry Members that are CAT Executing Brokers for the Buyer and for the Seller with regard to CAT costs previously paid by the Participants (''Past CAT Costs'').[33]

For each category of fees, each CEBB and each CEBS will be required to pay a CAT fee for each such transaction in Eligible Securities in the prior month based on CAT Data.[34] The CEBB's CAT fee or CEBS's CAT fee (as applicable) for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the reasonably determined Fee Rate,[35] as described below.[36] Participants would incur CAT Fees only for Prospective CAT Costs and the Participant CAT Fee will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the reasonably determined Fee Rate.[37] The Participants' one-third share of Historical CAT Costs [38] and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.[39]

FINRA CAT would be responsible for calculating the CAT fees and submitting invoices to the CAT Executing Brokers based on this CAT Data.[40] All data used to calculate the fees under the Executed Share Model would be CAT Data, and, therefore, it would be directly available through the CAT to FINRA CAT for calculating CAT fees.[41]

Once the Proposed Amendment has been approved by the Commission, the Participants would separately file proposed rule filings pursuant to Section 19(b) of the Exchange Act [42] to establish the amounts of the proposed CAT Fees and Historical CAT Assessments to be charged to Industry Members, subject to the satisfaction of applicable Financial Accountability Milestones as set forth in Section 11.6 of the CAT NMS Plan and the implementation of the billing and collection system for the CAT fees.[43] In each proposed rule filing, if the Participants seek to recover amounts under the Financial Accountability Milestones, they would need to discuss their completion of the applicable milestone.[44]

2. Allocation of Fee Among Participants and Industry Members

Under the Executed Share Model, CAT fees would be allocated one-third to the applicable Participant, one-third to the CEBS and one-third to the CEBB of a transaction. Certain commenters opposed the proposed allocation.[45]

FINRA stated that, while the Proposed Amendment justified the fairness of the Executed Share Model because it would operate like other fees, like FINRA's Trading Activity Fee (''TAF''), Section 31 fees, and the options regulatory fee,[46] the Proposed Amendment did not support why those fee frameworks should be used as a model in this context.[47] For example, FINRA stated that the TAF is designed to recover the costs of FINRA's regulatory activities, while the CAT fees are intended to align with the costs to build, operate and administer the CAT.[48] Further, FINRA stated that the Proposed Amendment has insufficiently explained the connection between the TAF and CAT fees, merely stating that they are similar fees because they are transaction-based fees used to provide funding for regulatory costs.[49] FINRA stated that ''CAT LLC's observations superficially focus on the fact that these fees also use transaction-based metrics (and may be assessed on members) and neglects other factors relevant to the analysis including, for example, that these fees are used in combination with other funding mechanisms and metrics to support an overall funding framework.'' [50]

Another commenter stated that the proposed CAT funding model cannot be compared to Section 31 fees, the TAF, or the options regulatory fee because the commenter believes that CAT fees appear to be unconstrained and out of the industry's control.[51] The commenter explained that, unlike the proposed CAT fees, Section 31 fees are based on an annual budget set by Congress and the options regulatory fee is only applied to customer transactions and thus can be easily passed-on to other market participants (unlike CAT fees for market making activity).[52] Additionally,

[31] *See* Notice, *supra* note 7, 88 FR at 17087.

[32] *Id.* at 17086; *see also* proposed Section 11.3(a). The defined term ''CAT Fees'' applies specifically to CAT fees related to Prospective CAT Costs. *Id.*

[33] *See* Notice, *supra* note 7, 88 FR at 17086; *see also* proposed Section 11.3(b).

[34] *See* Notice, *supra* note 7, 88 FR at 17093; *see also* proposed Section 11.3(a)(iii), proposed Section 11.3(b)(iii).

[35] *See infra* Section III.A.5.a. (Prospective CAT Fees—Fee Rate Formula) for the definition and description of the calculation of the Fee Rate. *See also infra* notes 1100–1102 and accompanying text (stating that the anticipated CAT Fee Rate and the fee rate for Historical CAT Assessments are expected to be relatively small).

[36] *See* Notice, *supra* note 7, 88 FR at 17095; *see also* proposed Section 11.3(a)(iii), proposed Section 11.3(b)(iii).

[37] *See* Notice, *supra* note 7, 88 FR at 17094; *see also* proposed Section 11.3(a)(ii).

[38] The actual amount of Past CAT Costs to be recovered through the Historical CAT Assessments would be reduced by an amount of ''Excluded Costs.'' The resulting amount would be defined as ''Historical CAT Costs'' in proposed Section 11.3(b)(i)(C) of the CAT NMS Plan. *See infra* Section III.A.6.a. for a discussion of Historical CAT Costs.

[39] *See* proposed Section 11.3(b)(ii).

[40] *See* Notice, *supra* note 7, 88 FR at 17088.

[41] *Id.*

[42] 15 U.S.C. 78s(b).

[43] *See* Notice, *supra* note 7, 88 FR at 17086, 17122.

[44] Proposed Section 11.3(b)(iii)(B)(III) would prohibit any Participant from filing proposed rule filings pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone in Section 11.6 of the CAT NMS Plan has been satisfied.

[45] *See* Letters to Vanessa Countryman, Secretary, Commission, from Stephen John Berger, Managing Director, Global Head of Government and Regulatory Policy, Citadel Securities, dated July 14, 2023 (''Citadel July Letter''); August 22, 2023 (''Citadel August Letter''); Marcia E. Asquith, Corporate Secretary, EVP, Board and External Relations, FINRA, dated May 25, 2023 (''FINRA May 2023 Letter''); April 11, 2023 (''FINRA April 2023 Letter''); and June 22, 2022 (''FINRA June 2022 Letter'') (the FINRA June 2022 Letter was submitted in response to the prior funding proposal and was attached and incorporated by reference in the FINRA April 2023 Letter); Ellen Greene, Managing Director, Equities & Options Market Structure, and Joseph Corcoran, Managing Director, Associate General Counsel, SIFMA, dated July 13, 2023 (''SIFMA July 2023 Letter''); June 5, 2023 (''SIFMA June 2023 Letter''); May 2, 2023 (''SIFMA May 2023 Letter''); January 12, 2023 (''SIFMA January 2023 Letter''); December 14, 2022 (''SIFMA December 2022 Letter''); October 7, 2022 (''SIFMA October 2022 Letter''); and June 22, 2022 (''SIFMA June 2022 Letter'') (the SIFMA June 2022 Letter, SIFMA October 2022 Letter, SIFMA December 2022 Letter and SIFMA January 2023 Letter were submitted in response to the prior funding proposal and incorporated by reference in the SIFMA May 2023 Letter); Joanna Mallers, Secretary, FIA Principal Traders Group, dated July 14, 2023 (''FIA Letter''); Douglas A. Cifu, Chief Executive Officer, Virtu Financial, dated July 13, 2023 (''Virtu Letter''). *See infra* note 58.

[46] *See* Notice, *supra* note 7, 88 FR at 17122.

[47] *See* FINRA June 2022 Letter at 4.

[48] *See* FINRA April 2023 Letter at 8.

[49] *Id.* The commenter also stated that ''it is unclear how assessing on FINRA the largest allocation of the SRO portion of CAT expenses 'provides funding for regulatory costs' in any reasonable and equitable sense comparable to the TAF . . .'' *Id.*

[50] FINRA May 2023 Letter at 3.

[51] Citadel July Letter at 27.

[52] *Id.* The commenter also stated that FINRA has sought to avoid increases in the TAF. *Id.*

the commenter stated that there is no precedent for fees to be allocated to Industry Members in perpetuity, stating that this would contravene the Exchange Act.[53]

One commenter disagreed with the Participants' statement that the Executed Share Model's similarity to other transaction-based fees approved by the Commission is adequate justification for consistency with the Exchange Act.[54] The commenter stated that similarity to other transaction-based fees is not an adequate basis to show that the Executed Share Model is consistent with relevant standards; each proposed fee must be individually supported.[55] For example, the commenter stated that the Participants compared the Executed Share Model to Section 31 fees as justification for the Executed Share Model, but failed to address the differences between the Executed Share Model and Section 31 fees, such as the Executed Share Model's treatment of high-volume trades in low-priced stocks while Section 31 fees are based on the notional value of a trade.[56]

Commenters also questioned the Participants' justifications for the one-third allocation methodology. FINRA stated that the Proposed Amendment did not justify why the proposed allocation by thirds to the Participant, buy-side and sell-side is equitable in the context of the CAT NMS Plan.[57] FINRA also stated that the Proposed Amendment did not consider alternatives suggested by commenters on a prior proposed funding model,[58] such as a model similar to Section 31 fees and a CAT funding model based on the ''Cost Recovery Principle'' and the ''Benefits Received Principle.'' [59] FINRA urged the Commission to require those alternatives to be analyzed.[60]

One commenter stated that the Participants have not met their burden to demonstrate the proposed allocation is consistent with the Exchange Act fee standards and not arbitrary.[61] The commenter stated that because FINRA is funded by Industry Members, Industry Members would pay over 80% of CAT costs since they must pay not only their own share but FINRA's as well; therefore, the Commission should disapprove the proposal.[62] The commenter stated that the Proposed Amendment does not explain how allocating 80% of total CAT costs to the industry in perpetuity without a mechanism to limit the budget [63] is consistent with the Exchange Act and guidance on SRO filings related to fees because the industry has no role in the governance, oversight or design of CAT and does not benefit from the CAT.[64] Another commenter stated that Industry Members will bear significantly more costs than the Proposal suggests if the Participants decide to charge their members to fund their share of CAT fees.[65] The commenter stated that ''[i]f the Participants were to do this, it would render the entire Funding Model meaningless, with Industry Members bearing 100% of CAT costs.'' [66] Another commenter also stated that it was inappropriate to place responsibility for funding the CAT ''on industry members that do not stand to benefit from it.'' [67]

One commenter stated that the Proposed Amendment does not demonstrate that it is equitable, as required by Section 6(b)(4),[68] or rational, as required by the Administrative Procedure Act,[69] to allocate two-thirds of CAT costs to Industry Members, stating that ''there is no suggestion that Industry Members somehow receive 67% of the benefits from CAT.'' [70] Furthermore, the commenter stated that the Proposed Amendment would result in an inequitable allocation to a small number of Industry Members.[71]

The commenter also stated that the Proposed Amendment would result in the allocation of all of the costs to build and operate the CAT to Industry Members and would therefore be inconsistent with Section 6(b)(4) to equitably allocate reasonable fees.[72] The commenter stated that, in addition to the proposed allocation to Industry Members, FINRA's 11% cost allocation would be passed-on to Industry Members and that exchanges would also pass-on their 22% cost allocation.[73] The commenter stated that, with FINRA's allocation, 78% of the costs to build and operate the CAT would be allocated to Industry Members under the Proposed Amendment.[74] The commenter stated that 78% is the same amount allocated to Industry Members in a prior CAT funding model proposal from 2021, and stated that in the Proposed Amendment, the Operating Committee concedes that the 2021 allocation ''may have an adverse effect on competition, liquidity or other aspects of market structure,'' [75] however the Proposed Amendment does not explain why using a different metric—executed share volume rather than message traffic—to create the same allocation would not result in similar consequences.[76]

Further, the commenter stated that Industry Members may also be required

[53] *Id.* This commenter stated that it is inequitable to require Industry Members to fund CAT costs in perpetuity when they lack representation on the Operating Committee and therefore have little transparency into the drivers of the costs, and there is no plan to contain the costs. *See id.* at 2.

[54] *See* SIFMA June 2022 Letter at 4.

[55] *Id.*

[56] *See* SIFMA October 2022 Letter at 7. *See also* Citadel August Letter at 5.

[57] *See* FINRA June 2022 Letter at 3.

[58] *See* Securities Exchange Act Release Nos. 94984 (May 25, 2022), 87 FR 33226 (June 1, 2022); 96394 (Nov. 28, 2022), 87 FR 74183 (Dec. 2, 2022); and Letter from Michael Simon, Chair Emeritus, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Commission (Feb. 15, 2023).

[59] *See* FINRA April 2023 Letter at 5 (*citing* Letter to Vanessa Countryman, Secretary, Commission, from Lawrence Harris, Fred V. Keenan Chair in Finance, Professor of Finance and Business and Economics, U.S.C. Marshall School of Business, dated June 21, 2022).

[60] *Id.* Another commenter suggested a review of alternative approaches to funding, such as the extent to which CAT could be funded by Section 31 fees. *See* Letter to Vanessa Countryman, Secretary, Commission, from Kirsten Wegner, Chief Executive Officer, Modern Markets Initiative, dated July 13, 2023 (''MMI July Letter''), at 4.

[61] *See* SIFMA May 2023 Letter at 6; SIFMA June 2023 Letter at 1–2. The commenter also stated that the Proposed Amendment provides unsupported conclusory statements that it meets the requirements of the Exchange Act. *See* SIFMA June 2023 Letter at 2. *See also id.* at n 11; FIA Letter at 2.

[62] *See* SIFMA May 2023 Letter at 2. *See also* SIFMA June 2022 Letter at 1–2 (stating that the proposed cost allocation methodology is inconsistent with Exchange Act fee standards because most costs would be imposed on Industry Members).

[63] The commenter stated that the CAT annual budget increased over 30% in the last year. *See* SIFMA June 2023 Letter at 4. *See also* Virtu Letter at 4 (stating that the budget increase indicated that the Industry Members could be subject to ever-increasing fees with no say on the budget). *See also* FIA Letter at 3 (stating that ''[w]ith little to no skin-in-the-game, the Participants will not be incentivized to control costs.''). *See infra* Section III.A.5.b (discussing budgeted CAT costs and comments suggesting a review mechanism to control costs).

[64] *See* SIFMA June 2023 Letter at 3, 4. The commenter stated that approving such a proposal would ''directly threaten[ ] efficiency, competition, and capital formation in U.S. securities markets.'' *Id.* at 4. The commenter also quoted a Commission release stating that the Participants are potentially conflicted in allocating CAT fees to themselves and the Industry Members. *See* Securities Exchange Act Release No. 89618 (Aug. 19, 2020), 85 FR 65470, 65482 (Oct. 15, 2020). Another commenter stated that the allocation of 80% to the industry was unfair. *See* Virtu Letter at 4.

[65] *See* FIA Letter at 2.

[66] *Id.*

[67] *See* Virtu Letter at 2.

[68] 15 U.S.C. 78f(b)(4).

[69] 5 U.S.C. 551 *et seq.*

[70] *See* Citadel July Letter at 17.

[71] *Id.*

[72] *Id.* at 1, 16, 22.

[73] *Id.* at 1, 21, 22.

[74] *Id.* at 21.

[75] *Id.*

[76] *See* Citadel July Letter at 21.

to pay the exchange cost allocation,[77] citing a statement in the Proposed Amendment that ''each Participant may determine to charge their members fees to fund their share of the CAT fees.'' [78] The commenter stated that if exchanges choose to do this, then Industry Members would be responsible for 100% of CAT costs, which would ''distort incentives and hinder the prioritization of critical cost-control measures, as the firms governing CAT are not bearing any of the associated costs.'' [79] The commenter requested that the Commission prohibit exchanges from passing-on their CAT costs.[80] The commenter also stated that even after restructuring the funding model to base allocation on share volume instead of message traffic, as in prior funding model proposals, the allocation to exchanges stayed the same, arguing that the exchanges are unwilling to allocate themselves more than 22% of total costs.[81] The commenter stated that the proposed allocation methodology is inconsistent with the Exchange Act because of the excessive percentage of total costs proposed to be allocated to Industry Members and the unfair method of allocating costs among Industry Members,[82] stating, ''[t]he allocation methodology will have a direct and negative impact on market efficiency, competition, and capital formation, and the Commission must comprehensively assess those impacts before approving this filing.'' [83]

The commenter stated that the Proposed Amendment does not provide the percentage of total costs to build and operate the CAT that will be borne by Industry Members in practice.[84] The commenter stated that it is necessary to determine the ultimate allocation of CAT costs to evaluate whether the proposed allocation is consistent with the Exchange Act, arguing that the statements made in support of the allocation were premised on the Participants being responsible for one-third of total CAT costs, and that if this is untrue, ''the filing must be completely reconsidered, taking into account (a) the impact on market efficiency, competition and capital formation of allocating this magnitude of additional costs to Industry Members, (b) whether such a lopsided allocation is fair and equitable, and (c) the implications for CAT governance and budget control if the firms governing CAT do not have any skin-in-the-game.'' [85]

One commenter stated that the Participants do not account for ''the time and expense Industry Members have devoted to developing and maintaining internal systems to be able to report the [sic] CAT, as well as the time and expense Industry Members have devoted to assisting the Operating Committee with its job of developing reporting specifications that allow the CAT to achieve its regulatory purpose'' in the proposed allocation [86] and that ''this omission is a flaw with the Participants' decision to allocate two-thirds of the CAT costs to Industry Members and its inclusion would demonstrate that the Participants' Executed Share Model does not provide for the equitable allocation of reasonable fees.'' [87]

Similarly, one commenter stated that the allocation does not take into account fees currently paid by the industry and implementation costs incurred by Industry Members to comply with CAT reporting requirements.[88] The commenter stated that Industry Members already provide funding for regulatory matters to exchanges through regulatory fees, membership fees, market data fees, and registration fees, and that these fees must be factored into any equitable or rational allocation of CAT costs.[89] The commenter stated that although the Proposed Amendment argues that there is no precedent for regulatory fees to be determined based on the cost of compliance of a regulated entity, it is necessary to take into account all CAT-related costs including those already allocated to Industry Members to assess whether the Proposed Amendment is equitable.[90]

Commenters also objected to statements made in the Proposed Amendment that the complexity of Industry Member business models contributes substantially to the costs of the CAT.[91] One commenter stated that the proposed allocation of two-thirds of CAT costs to Industry Members is unfair, unreasonable and arbitrary because the Participants are equally responsible for the complexity of trading activity in the markets.[92] The commenter disagreed with the Participants' argument that the allocation satisfies Exchange Act fee standards because Industry Members and the complexity of their business models drive the costs of the CAT, by stating that the examples of complexities provided were developed to address order types, activities and fee structures (such as the maker-taker fee structure) established by the Participant exchanges.[93] The commenter stated that the Participants are just as responsible for such cost-driving complex trading activity in the equity and options markets as Industry Members due to the ''large number of equity and options exchanges established by the exchange families with fundamentally different execution models and order types.'' [94] The commenter stated that the Participant exchanges have not analyzed how their own business decisions have resulted in the complexity of Industry Member order routing practices and CAT costs.[95] Another commenter stated that the complexity arguments in the Proposed Amendment contradict statements from the Operating Committee that stringent performance and other requirements for processing CAT data are significant drivers of CAT costs,[96] and that the complexity arguments suggest that costs should be allocated evenly among Industry Members, not just a small group of Industry Members based on volume.[97]

Commenters also disagreed with other justifications made in the Proposed Amendment for the proposed allocation; specifically, that there are more Industry Members than Participants and that Industry Members receive more in

[77] *Id.* at 22. *See also* Citadel August Letter at 2.

[78] *See* Citadel July Letter at 22. *See also* Notice, *supra* note 7, 88 FR at 17107. The commenter also stated that while the Proposed Amendment describes the funding model as ''neutral as to location and manner of execution,'' counterparties to off-exchange transactions would receive higher fees than on-exchange transactions if exchanges choose not to pass-on their cost allocation to Industry Members. *See* Citadel July Letter at 21. *See also* Notice, *supra* note 7, 88 FR at 17087.

[79] Citadel July Letter at 22. *See also id.* at 16. *See also* Citadel August Letter at 2 (stating that an allocation of 100% of CAT costs to Industry Members cannot be lawful).

[80] Citadel July Letter at 22.

[81] *Id.* at 10.

[82] *Id.* at 15.

[83] *Id.*

[84] *See* Citadel August Letter at 2.

[85] *Id.*

[86] SIFMA June 2022 Letter at 4. *See also* SIFMA January 2023 Letter at 4.

[87] SIFMA June 2022 Letter at 4–5. *See also* SIFMA January 2023 Letter at 5; Virtu Letter at 3.

[88] *See* Citadel July Letter at 17. *See also* Virtu Letter at 2 (noting that Industry Members ''already provide the Plan Participants with a very substantial level of funding through membership fees, registration and licensing fees, dedicated regulatory fees, and options regulatory fees'').

[89] *See* Citadel July Letter at 17 (further stating, ''Industry Members are already bearing nearly all of the total CAT-related costs, at a rate much higher than the Commission estimated in its approval of the 2016 CAT NMS Plan.'' *Id.* at 18).

[90] *Id.*

[91] *See* Notice, *supra* note 7, 88 FR at 17104.

[92] *See* SIFMA May 2023 Letter at 3. *See also* SIFMA January 2023 Letter at 2, 3–4.

[93] *See* SIFMA May 2023 Letter at 6–7. *See also* SIFMA January 2023 Letter at 3; Notice, *supra* note 7, 88 FR at 17104.

[94] SIFMA January 2023 Letter at 3.

[95] *See* SIFMA May 2023 Letter at 7.

[96] *See* Citadel July Letter at 17–18.

[97] *Id.* at 18.

revenue than the Participants.[98] One commenter stated that these assertions are not relevant in demonstrating that the proposed allocation is fair and reasonable.[99] The commenter stated that the Participants are justifying the allocation based on the ability to pay rather than cost generation, which the commenter believes is inconsistent ''with the Participant Exchanges' proposed approach . . . of allocating CAT costs based on approximate responsibility for generating them . . .'' and ''with the historical CAT decision to allocate costs to the parties responsible for generating them.'' [100] The commenter suggested an alternative allocation that would equally split CAT costs between Participant exchanges and Industry Members, while FINRA would be subject only to a nominal regulatory user fee to access CAT Data.[101] Another commenter stated that, while most Industry Members will pay little to no CAT costs, 20 Industry Members will be responsible for 75% of the costs allocated to Industry Members.[102] The commenter said this would contradict the Proposed Amendment's arguments that there are more Industry Members than Participants and that Industry Members have greater financial resources than Participants because the Operating Committee would outnumber the Industry Members that would be paying the most in costs.[103]

The commenter also stated that the Proposed Amendment lacks support for the proposed allocation.[104] The commenter stated that the Operating Committee has not met its burden to demonstrate that the proposed allocation is consistent with the Exchange Act.[105] The commenter also stated that the Proposed Amendment does not consider the impact of the proposed allocation to Industry Members on market efficiency, competition and capital formation, particularly with respect to the costs the industry will incur to build systems to pass-through their CAT fees, the expected impact on volumes, the expected impact on retail investors, and the expected impact on market makers.[106]

The commenter suggested alternatives to the proposed allocation methodology.[107] The commenter stated that Industry Members should not be allocated more than 50% of ongoing CAT costs (including FINRA's allocation) due to their lack of industry voting representation and because they already bear nearly all of the total CAT-related costs.[108] The commenter also suggested that exchanges should be prohibited from passing-on their CAT cost allocation to market participants,[109] and that the Participants consider allocating costs to the Commission ''to align incentives.'' [110] The commenter recommended a consistent methodology for allocating costs to both Industry Members and exchanges.[111] The commenter also recommended an allocation methodology that would ensure that ''a small group of firms are not disproportionately bearing costs given that CAT is designed to facilitate market-wide surveillance across all market participants,'' [112] and would not inequitably allocate costs to specific market segments (such as ''retail trading activity in NMS stocks'').[113] The commenter suggested that the approach could have ''(I) minimum and maximum fee levels, (II) appropriate calibrations for liquidity provision, (III) a volume component based on notional (instead of executed shares), and (IV) consideration of additional metrics that could achieve a more equitable outcome (*e.g.,* broker-dealer capital).'' [114]

Commenters also raised concerns about statements in the Proposed Amendment that CAT costs would be passed on to investors.[115] One commenter stated, ''[s]uch an assertion is inaccurate because it is almost certain that there will be scenarios faced by Industry Members in which they will not be able to figure out who was responsible for generating certain Historical CAT Costs.'' [116] The commenter stated that such assertions would minimize the Participants' obligation to allocate fees consistent with Exchange Act fee standards and could result in the inequitable allocation of CAT fees to Industry Members under the mistaken belief that such fees would be passed down to investors.[117] FINRA objected to statements in the Proposed Amendment that Industry Members can pass through to their customers their CAT cost allocation and additional costs resulting from an increase in FINRA fees.[118] FINRA stated that ''[s]ummarily stating that investors can be made to bear the costs resulting from the Funding Model without a detailed description of and transparency into how these fees would be determined or passed on to customers is inadequate, and does not provide interested parties sufficient information to consider the costs and benefits related to the Fee Proposal.'' [119] Another commenter expressed concern that CAT costs will be passed-through to investors directly or indirectly by affecting the transaction prices of equities, stating that this could negatively impact the investment returns of long-term investors (including retail investors).[120] The commenter stated that the Participants have failed to analyze how passing-through CAT costs to investors is consistent with Exchange Act fee standards, and that the Commission has not fully considered

[98] *See* Notice, *supra* note 7, 88 FR at 17104.

[99] *See* SIFMA May 2023 Letter at 7. *See also* SIFMA January 2023 Letter at 4.

[100] *See* SIFMA May 2023 Letter at 7. The commenter cited to the funding principles in Section 11.2 of the CAT NMS Plan.

[101] *See* SIFMA January 2023 Letter at 4. *See also* SIFMA May 2023 Letter at 8; SIFMA June 2022 Letter at 5; SIFMA October 2022 Letter at 4. This commenter also suggested another alternative allocation in which costs would be allocated to those Participants and Industry Members most directly responsible for the costs. Under this alternative, Industry Members would be responsible for the cost associated with initial ingestion of the data into the CAT system. The commenter explained that Participants would be responsible for the costs associated with the stages after the data is initially ingested into the CAT system because the regulators directly control and benefit from these stages of the CAT system after ingestion. *See* SIFMA June 2022 Letter at 5–6.

[102] *See* Citadel July Letter at 17. The commenter also stated that the Proposed Amendment does not explain why it would be equitable to allocate 50% of total CAT costs to 20 Industry Members and 22% of total CAT costs to 24 exchanges. *Id.*

[103] *Id.*

[104] *Id.* at 13. *See also* Citadel August Letter at 2.

[105] *See* Citadel July Letter at 13.

[106] *Id.* at 2, 16, 19, 20. The commenter further stated that the Proposed Amendment is inconsistent with the Exchange Act because it cannot equitably allocate fees and will harm market efficiency, competition and capital formation. *Id.* at 16.

[107] *Id.* at 3, 30, 31. The commenter stated that the Commission must consider reasonable alternatives and that the proposal should be rejected and replaced by a proposal incorporating the commenter's recommendations. *Id.* at 30, 2.

[108] *Id.* at 3, 30, 31.

[109] *See* Citadel July Letter at 3, 30, 31.

[110] *Id.* at 3, 31. In response, CAT LLC stated that the Commission is not a party to the CAT NMS Plan, or subject to Rule 608 of Regulation NMS or Section 19(b) of the Exchange Act. *See* Letter to Vanessa Countryman, Secretary, Commission, from Brandon Becker, CAT NMS Plan Operating Committee Chair, dated July 28, 2023 (''CAT LLC July 2023 Response Letter''), at 31, n.144.

[111] *See* Citadel July Letter at 30–31.

[112] *Id.* at 30.

[113] *Id.* at 3, 30.

[114] *See id.* at 30. *See also* Citadel August Letter at 5.

[115] *See* SIFMA May 2023 Letter at 8; FINRA April 2023 Letter at 6–7; Citadel July Letter at 20; Citadel August Letter at 3; Letter to Vanessa Countryman, Secretary, Commission, from Lindsey Weber Keljo, Head—Asset Management Group, SIFMA, dated September 5, 2023 (''SIFMA AMG Letter''). *See also* Virtu Letter at 4 (noting the inherent difficulties in implementing systems and processes to track and pass through fees to the appropriate client firms and stating that executing brokers would likely end up absorbing the fees themselves).

[116] *See* SIFMA May 2023 Letter at 8; *see also* Virtu Letter at 4.

[117] *See* SIFMA May 2023 Letter at 8.

[118] *See* FINRA April 2023 Letter at 6–7.

[119] *Id.* at 7.

[120] *See* SIFMA AMG Letter at 2.

these economic effects on clients and other end investors.[121]

One commenter stated that many of the largest Industry Members would be allocated CAT fees based on proprietary trading activity, so they would not be able to pass through their fees to investors.[122] The commenter urged an analysis of proprietary executed volume compared to customer executed volume in order to evaluate how CAT costs will be allocated among Industry Members and whether the allocation methodology is fair, equitable and not unfairly discriminatory.[123] The commenter also stated that the Proposed Amendment is inconsistent with Section 6(b)(5) by imposing a new and increasing expense on investors, which would negatively impact liquidity and efficiency, and that the proposed allocation to Industry Members would disproportionately impact market makers (because 20 firms would have to pay most of the costs) and retail investors (due to their trading in sub-dollar NMS stocks that increase executed share volume), in violation of Section 6(b)(8).[124]

In response to the comment stating that the Participants had not analyzed a suggested Section 31-style approach to a funding model,[125] CAT LLC stated that the CAT fee approach is similar to the Section 31 fee approach in how an exchange would be obligated to pay a transaction fee based on transactions occurring on that exchange, and that FINRA would be obligated to pay a transaction fee based on transactions in the over-the-counter market.[126] CAT LLC stated that the approaches are also similar because, in both, an exchange would be able to determine to pass the fee onto its members, as would FINRA.[127] CAT LLC stated that if the Section 31 approach would comply with the Exchange Act, then the proposed CAT fee approach should also comply with the Exchange Act and CEBBs and CEBSs could determine whether to pass such fees onto their clients.[128]

In response, FINRA stated that the CAT LLC May 2023 Response Letter misrepresented the commenter's letter by incorrectly stating that the commenter's letter recommended an approach similar to Section 31 fees.[129] FINRA clarified that it was noting that the Commission had received comments suggesting a model like the Section 31 fees, that the Participants had not ''meaningfully analyzed'' the suggested alternatives in the Proposed Amendment, and that the Commission should require the Participants to analyze the alternatives.[130]

CAT LLC further responded to FINRA's objections to the use of the TAF as precedent for CAT fees—specifically, FINRA's statement that unlike the proposed CAT fees, the TAF recovers the costs of FINRA's regulatory activities, while the Proposed Amendment is designed to align with the costs to build, operate and administer the CAT.[131] CAT LLC stated that there is no distinction between the two points raised by the commenter because CAT only has a regulatory purpose; therefore, costs to build, operate and administer the CAT are inherently regulatory costs.[132] CAT LLC also noted that FINRA distinguished the TAF from the proposed CAT fees by describing the TAF as being used in combination with other funding mechanisms to support a funding framework, but CAT LLC stated that ''this does not change the general conclusion that a transaction-based fee complies with the Exchange Act.'' [133]

In response to a commenter that stated that there is no precedent for CAT fees to be allocated to Industry Members in perpetuity, and that the Exchange Act would not allow CAT LLC to require Industry Members to fund unlimited costs in perpetuity,[134] CAT LLC stated that the proposed allocation would not require Industry Members to fund all costs since it would divide CAT costs such that one-third would be paid each by the Participant, CEBB and CEBS in a transaction.[135] Furthermore, CAT LLC stated that fees would not be paid in perpetuity, as the Fee Rate set by the Operating Committee at the beginning of each year would be based on reasonably budgeted CAT costs and projected total executed equivalent share volume for the year and would be adjusted mid-year, and that to implement the Fee Rates, the Participants would need to file fee filings pursuant to Rule 19b–4 with the Commission that must be consistent with the Exchange Act and allow the public the opportunity to comment on the fees.[136] CAT LLC added that the Executed Share Model would operate similarly to other fees that the Commission has determined are consistent with the Exchange Act, such as Participants' sales value fees related to Section 31, the TAF and the options regulatory fee, and that the comment did not recognize that Industry Members can choose to pass-through CAT fees to their customers like they do the Section 31-related sales value fees.[137]

In response to comments that objected to the proposed allocation to Industry Members because Industry Members would not benefit from the CAT,[138] CAT LLC stated allocating costs based on who benefits from the CAT is ''not appropriate or practical.'' [139] CAT LLC stated that the CAT is intended to benefit all market participants, explaining how it would benefit Industry Members, and stated that it would be ''impractical to determine a model that allocates a measurable amount of benefit that each market participant receives from the CAT.'' [140] In response to a commenter that suggested that Industry Members should not be allocated any ''costs for matters that primarily benefit the CAT Operating Committee or the SROs,'' [141] and a commenter that stated that the industry does not benefit from the CAT,[142] CAT LLC disagreed that Industry Members do not benefit from the CAT because CAT is critical for the

[121] *Id.* at 2, 3. The commenter stated that, ''[u]nder the Exchange Act, the Participants are required to demonstrate that the Proposed Amendment: (1) provides 'for the equitable allocation of reasonable dues, fees, and other charges,' (2) is 'not designed to permit unfair discrimination between customers, issuers, brokers or dealers' and (3) does not 'impose any burden on competition not necessary or appropriate in furtherance of the purposes' of the Exchange Act.'' *Id.* at 1, n.4 (citing to Sections 6 and 15A of the Exchange Act and Rule 700(b)(3)(iii) of the Commission's Rules of Practice. 15 U.S.C. 78s; 15 U.S.C. 15o–3; 17 CFR 201.700(b)(3)(iii)). Approval of the Proposed Amendment, however, is governed by Rule 608 of Regulation NMS. That rule requires the Commission to approve a proposed amendment to an effective national market system plan if it finds that the amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act. 17 CFR 242.608(b)(2).

[122] *See* Citadel July Letter at 20. *See also* Citadel August Letter at 3.

[123] *See* Citadel August Letter at 3. The commenter said that such an analysis is feasible and should account for aggregate costs to be borne by affiliated entities, stating that this is required in Section 11.2(c) of the 2016 CAT NMS Plan. *Id.*

[124] *See* Citadel July Letter at 2. *See also infra* notes 260–265.

[125] *See* FINRA April 2023 Letter at 5.

[126] *See* Letter to Vanessa Countryman, Secretary, Commission, from Brandon Becker, Chair, CAT NMS Plan Operating Committee, dated May 18, 2023 (''CAT LLC May 2023 Response Letter''), at 9.

[127] *Id.*

[128] *Id.*

[129] *See* FINRA May 2023 Letter at 3, n.8.

[130] *Id.*

[131] *See* FINRA May 2023 Letter at 3.

[132] *See* CAT LLC July 2023 Response Letter at 35.

[133] *Id.*

[134] *See* Citadel July Letter at 27.

[135] *See* CAT LLC July 2023 Response Letter at 14.

[136] *Id.*

[137] *Id.*

[138] *See* Citadel July Letter at 17; Virtu Letter at 2.

[139] CAT LLC July 2023 Response Letter at 10.

[140] *Id.* at 11.

[141] Citadel July Letter at 32.

[142] *See* Virtu Letter at 4.

protection of investors and because CAT supports fair and efficient markets.[143] CAT LLC also stated that it was not ''reasonable or practical to attempt to parse CAT costs by who 'primarily benefits' from those costs.'' [144]

In response to comments that state that Industry Members could bear 100% of CAT costs if Participants decide to pass-through their costs to them,[145] CAT LLC stated that Industry Members can pass through their own CAT fees to their customers, like broker-dealers do for transaction-based fees.[146] CAT LLC stated that this may result in Industry Members not having any funding burden if they decide to entirely pass-through their allocation to investors.[147] In response to commenters that requested that Participant be prohibited from passing-on their CAT costs to their members,[148] CAT LLC stated that Participants are permitted by the Exchange Act to charge their members fees to fund the Participants' share of CAT fees, as long as they submit fee filings that demonstrate that any proposed fee is consistent with the Exchange Act.[149]

In response to comments objecting to the proposed allocation to Industry Members for not taking into account regulatory fees currently paid by Industry Members,[150] CAT LLC stated that the Proposed Amendment is intended to assess fees ''directly associated with the costs of establishing and maintaining the CAT, and not unrelated SRO services.'' [151]

In response to comments on whether Participants' models are equally to blame for the complexity of the markets,[152] CAT LLC stated that its analysis of the complexity of the industry's business models is based on the effects of those models on the costs of the CAT, which it stated are more profound than those of Participants, not on complexity of the market in general.[153] CAT LLC explained that the complexity of the Industry Members' business models results in significant data processing and storage costs, which Participants do not contribute to as they do not originate market activity or orders.[154] CAT LLC explained that (1) the complexity and diversity of Industry Members' business models and order handling practices require processing and storage of hundreds of reporting scenarios for Industry Members, resulting in significant data processing and storage costs; [155] (2) Industry Members have more late data and corrections than Participants, resulting in significant linker costs; [156] and (3) Industry Members have customers, which results in CAT costs related to customer account information (FDID, CCID and CAIS) and customer investment strategies.[157] CAT LLC also stated that Participants would pay the same amount as the CEBBs and CEBSs in each transaction.[158] In response to one commenter that stated that Industry Members implemented complex routing strategies to optimize exchange fees and rebates because exchange business decisions resulted in these and other exchange fee structures,[159] CAT LLC stated that the commenter did not demonstrate a causal connection between exchange fee structures and CAT costs.[160] CAT LLC stated that it was not involved in these Industry Member business decisions and a substantial amount of CAT costs result from such business decisions.[161] CAT LLC also stated that Participant activity does not contribute as much to CAT costs as complex Industry Member activity.[162]

CAT LLC also disagreed with one commenter's dismissal of CAT LLC's consideration of Industry Members' relative ability to pay,[163] stating that the Exchange Act specifically requires that the fees be fair and reasonable, which necessitates consideration of the relative ability to pay.[164] CAT LLC stated that fairness issues require the Participants to consider the greater financial resources of Industry Members in the creation of a funding model. CAT LLC also stated that the commenter's position runs contrary to its comments that an Industry Member's ability to pay is an important consideration in the context of CAT fees.[165]

Additionally, CAT LLC objected to the commenter's statement that the proposed allocation is ''inconsistent with the historical CAT decision to allocate costs to the parties responsible for generating them.'' [166] CAT LLC stated that, while the CAT NMS Plan does not require CAT costs to be allocated to parties responsible for generating such costs, the proposed allocation addresses cost burden on the CAT by (i) taking into account the impact of Industry Member activity on CAT costs, and (ii) using trading activity, which CAT LLC believes is a ''reasonable proxy for cost burden on the CAT,'' [167] as the metric for cost allocation.[168] CAT LLC also stated that there are other examples of trading activity-based fees so the funding model would not be novel or unique.[169]

Additionally, CAT LLC responded to the commenter's suggested alternative proposal that would equally allocate CAT costs to Participant exchanges and Industry Members, stating that the commenter did not explain why the alternative would satisfy the Exchange Act standards, and noting that CAT LLC had previously considered such an allocation but believed that it would not result in a fair and equitable allocation due to the greater number of Industry Members than Participants, the greater financial resources of Industry Members, and the failure of the suggested allocation to take into account how the complexity of Industry Member business models contributes substantially to CAT costs.[170]

In response, the commenter stated that the CAT LLC Response Letter did not meaningfully address the concerns it raised about the allocation of CAT costs between Participants and Industry Members.[171] CAT LLC further responded, stating that it has responded to the commenter's comments several times and that just because CAT LLC did not adopt the commenter's viewpoints does not mean that CAT LLC

[143] *See* CAT LLC July 2023 Response Letter at 13.

[144] *Id.* at 12. *See also id.* at 13.

[145] *See* Citadel July Letter at 16, 22; FIA Letter at 2.

[146] *See* CAT LLC July 2023 Response Letter at 8.

[147] *Id.*

[148] *See* Citadel July Letter at 3, 22, 30; FIA Letter at 2–3.

[149] *See* CAT LLC July 2023 Response Letter at 9.

[150] *See* Citadel July Letter at 17; Virtu Letter at 2. CAT LLC also objected to one commenter's description of the CAT as an exchange ''revenue generator,'' stating that CAT LLC is a business league under Section 501(c)(6) of the Internal Revenue Code, and that enforcement activity obtains restitution for investors and deters future misconduct rather than generating revenue. *See* CAT LLC July 2023 Response Letter at 13–14 (responding to Citadel July Letter at 17).

[151] CAT LLC July 2023 Response Letter at 13.

[152] *See* SIFMA May 2023 Letter at 3; 6–7. *See also* SIFMA January 2023 Letter at 2, 3–4.

[153] *See* CAT LLC May 2023 Response Letter at 6; CAT LLC July 2023 Response Letter at 6.

[154] *See* CAT LLC May 2023 Response Letter at 7; CAT LLC July 2023 Response Letter at 7.

[155] *See* CAT LLC July 2023 Response Letter at 7.

[156] *Id.*

[157] *Id.*

[158] *Id.* at 6.

[159] *See* SIFMA May 2023 Letter at 7.

[160] *See* CAT LLC July 2023 Response Letter at 6.

[161] *Id.*

[162] *Id.*

[163] *See* SIFMA May 2023 Letter at 7. *See also* SIFMA January 2023 Letter at 4.

[164] *See* CAT LLC May 2023 Response Letter at 7; CAT LLC July 2023 Response Letter at 7.

[165] *See* CAT LLC July 2023 Response Letter at 7–8.

[166] *See* CAT LLC May 2023 Response Letter at 7; CAT LLC July 2023 Response Letter at 8; SIFMA May 2023 Letter at 7.

[167] *See* CAT LLC May 2023 Response Letter at 7; CAT LLC July 2023 Response Letter at 8.

[168] *See* CAT LLC May 2023 Response Letter at 7; CAT LLC July 2023 Response Letter at 8.

[169] *See* CAT LLC July 2023 Response Letter at 8.

[170] *See* CAT LLC May 2023 Response Letter at 7.

[171] *See* SIFMA June 2023 Letter at 2.

did not consider or respond to the commenter's comments.[172]

In response to a commenter that recommended allocating no more than 50% of CAT costs to Industry Members, including the FINRA allocation,[173] CAT LLC stated that the commenter did not offer a reasoned basis why such an allocation would be consistent with the Exchange Act.[174] CAT LLC also stated that such an allocation would raise fairness concerns because, as compared to Participants, Industry Members have greater financial resources, and their complex business models ''contribute substantially to the costs of the CAT.'' [175] Furthermore, in response to the commenter's other suggested allocation methodology which the commenter believed would ensure that a small group of firms and specific market segments would not be subject to inequitable cost burdens,[176] CAT LLC stated that the commenter did not explain how the suggested methodology would fit into a funding model or how such a funding model would be consistent with the Exchange Act.[177] CAT LLC stated that it evaluated various other funding models over the past seven years and concluded that ''the Executed Share Model provides a variety of advantages in comparison to the alternatives, and satisfies the requirements of the Exchange Act. . .'' [178]

In response, the commenter stated that its suggestions, which included minimum and maximum fee levels, calibrations for liquidity provision, and consideration of additional metrics,[179] were included in prior funding model proposals.[180] The commenter stated that the CAT Operating Committee should explain why it changed its position on ''the importance of these elements as part of a fair and equitable funding proposal that is consistent with the Exchange Act.'' [181]

The Executed Share Model reflects a reasonable approach to funding the building and operation of the CAT.[182] The CAT NMS Plan requires both Participants [183] and Industry Members (which would include CAT Executing Brokers) to fund the CAT.[184] The costs of CAT therefore must be allocated in some fashion between Participants and Industry Members, and how to do so is a question of judgment for which there may be multiple reasonable approaches. CAT LLC has proposed to allocate CAT fees equitably among the three parties who have primary roles related to the transaction: the buyer, seller, and market regulator. In response to one commenter that stated that the proposed allocation methodology is inconsistent with the Exchange Act because of an excessive percentage of total costs proposed to be allocated to Industry Members and an unfair method of allocating costs among Industry Members,[185] the Commission believes that the proposed allocation is reasonable as discussed below.[186]

While a commenter said the Proposed Amendment did not justify why the TAF, options regulatory fee, and Section 31 fees should be used as a model in the context of the Executed Share Model,[187] CAT was created to serve regulatory purposes. Moreover, CAT Data can only be used by SROs and the Commission for regulatory and surveillance purposes.[188] Therefore, the costs incurred by the Participants to build, operate and administer the CAT similarly are regulatory costs, which here the Participants are seeking to recover through the CAT fees.

Commenters expressed concerns that the Participants may impose fees on their members to recoup costs relating to CAT, making Industry Members responsible for CAT funding costs beyond those to which they will be directly assessed pursuant to the Executed Share Model,[189] that CAT costs will be passed-through to investors and that this aspect of the Proposed Amendment lacks information needed to demonstrate that it meets the approval standard and to allow the Commission and other interested parties to consider the resulting economic effects.[190] In response to the comments, the Commission acknowledges the concerns but also emphasizes that, as discussed above, the CAT provides important benefits in facilitating effective market surveillance and the Exchange Act expressly contemplates the ability of the Participants to recoup their costs to fulfill their statutory obligations under the Exchange Act.[191] To that end, the CAT NMS Plan expressly contemplates the allocation of the costs associated with operating the CAT among the Participants and the Industry Members. The use of the Executed Share Model is a reasonable method, among a number of potential approaches to do so.

The Commission recognizes that these operational costs may be passed on in other ways, including by both the Participants and Industry Members, who each may elect to pass on such operational costs as fees to customers indirectly through their charges for services to customers. That would be true regardless of how the Proposed Amendment chose to set the initial allocation. Even if the Participants decide to pass-through the costs of CAT to Industry Members, however, in our view, the rule filing process under Section 19(b) and Rule 19b-4 will still incentivize the Participants to control costs. Any effort to pass-through costs will be subject to that process and, if the Participants fail to control costs, their ability to demonstrate that a proposed fee is reasonable and consistent with the Exchange Act may be compromised. After the Participants file their proposed rule changes relating to fees with the Commission, those proposed rule changes are published by the Commission and there is an opportunity for public comment.[192] Although the proposed rule changes could likely take effect upon filing,[193] the Commission

[172] *See* CAT LLC July 2023 Response Letter at 27.

[173] *See* Citadel July Letter at 31.

[174] *See* CAT LLC July 2023 Response Letter at 10.

[175] *Id.*

[176] *See* Citadel July Letter at 30.

[177] *See* CAT LLC July 2023 Response Letter at 10.

[178] *Id.* at 11–12.

[179] *See* Citadel August Letter at 5.

[180] *Id.* (citing the minimum and maximum fees and market making discounts proposed in a funding model proposal from the CAT Operating Committee that was filed in 2021. *See* Securities Exchange Act Release No. 91555 (Apr. 14, 2021), 86 FR 21050 (Apr. 21, 2021)).

[181] *Id.*

[182] *See* 17 CFR 242.608(b)(2).

[183] The CAT NMS Plan requires Execution Venues and Industry Members to fund the CAT. The definition of ''Execution Venue'' includes Participants. *See supra* note 15.

[184] *See* CAT NMS Plan, *supra* note 2, at Section 11.1(b), 11.3(a) and (b). Section 11.1(b) of the CAT NMS Plan authorizes the Operating Committee to establish fees for Execution Venues (which include Participants) and Industry Members to fund the CAT and Sections 11.3(a) and (b) of the CAT NMS Plan set forth how these fees would be calculated. *See also* Rule 613(a)(1)(vii)(D) discussing how the CAT NMS Plan shall discuss the proposed allocation of estimated costs among the plan sponsors, and between the plan sponsors and members of the plan sponsors. 17 CFR 242.613(a)(1)(vii)(D).

[185] *See* Citadel July Letter at 15.

[186] *See infra* notes 189–201 and accompanying text.

[187] *See* FINRA June 2022 Letter at 4; FINRA April 2023 Letter at 8.

[188] *See* 17 CFR 242.613(e)(4)(i)(A); CAT NMS Plan Sections 6.5(c) and 6.5(g) and Appendix D, Section 8.1.

[189] *See* SIFMA May 2023 Letter at 2; Citadel July Letter at 16, 17, 21, 22; Citadel August Letter at 2.

[190] *See* SIFMA AMG Letter at 2; FINRA April 2023 Letter at 6–7.

[191] Sections 6(b)(1) and 15A(b)(2) of the Exchange Act require that a national securities exchange or national securities association have the capacity to be able to carry out the purposes of the Exchange Act, the rules and regulations thereunder, and the rules of the exchange or association. 15 U.S.C. 78f(b)(1); 15 U.S.C. 78o–3(b)(2).

[192] 15 U.S.C. 78s(b).

[193] 15 U.S.C. 78s(b)(3)(A); 17 CFR 240.19b–4(f)(2). Pursuant to Exchange Act Rule 19b–4, a proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Exchange Act if properly designated by the self-

can temporarily suspend immediately effective rule changes if such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.[194] If the Commission takes such action, the Commission will institute proceedings under Section 19(b)(2)(B) to determine whether the proposed rule changes should be approved or disapproved.[195] Those fees, like any fees the Participants collect from their members to fund their SRO responsibilities in market and member regulation, must be consistent with applicable statutory standards under the Exchange Act, including being reasonable, equitable and not unfairly discriminatory.[196] Additionally, as stated by CAT LLC, Industry Members may be able to offset fees that FINRA assesses them by passing their CAT fees through to their customers,[197] and as discussed further below, the Commission believes that the additional costs borne by investors are likely small relative to current transaction costs.[198] The Commission recognizes that not all Industry Members currently pass through fees and cannot determine in advance the extent to which Industry Members can or will pass-through their CAT fees to investors or would determine to do so in the future. But we believe that many are able to and that at least some will do so. For all of these reasons, contrary to the view of some commenters,[199] the Commission does not believe that the inability to determine the amount of the CAT costs that will be passed along to investors precludes a finding that the allocation model set forth in the Proposed Amendment meets the approval standard.

In response to the commenter stating that proprietary trading firms cannot pass-through fees to investors and suggesting that an analysis of proprietary executed volume compared to customer executed volume is necessary to determine if the allocation is fair, equitable, and unfairly discriminatory,[200] the Commission believes it is reasonable to charge executing brokers regardless of whether they are trading for their own account or for a customer's account. The Commission acknowledges that there is not a customer *per se* for proprietary trades and therefore, proprietary trading firms would not be able to pass-through their CAT fees to customers. However, regardless of whether a firm trades for its own account or for a customer account, in both instances, the firm engages in trading activity to earn a profit. In the Commission's view, it is reasonable to allow a firm to incur CAT fees for its profit-making business activities, such as proprietary activity. The Commission recognizes that Industry Members may pass-through CAT fees for customer executed volume but in the case of proprietary trades where a firm is trading for its own account, there is no customer to which the firm can pass-through fees, as the firm itself is the ultimate investor, and thus it is reasonable for the firm to be responsible for payment of CAT fees for those trades. Further, the Commission believes it is reasonable to allow a firm to incur CAT fees for its profit-making activity, which in this case is proprietary activity. CAT is a regulatory tool that will be used by the Participants and the Commission to oversee the activities for which Industry Members earn profits and therefore it is reasonable for fees to be charged for that profit-making activity, even if those fees cannot be passed on to customers.

While comments raised concerns that the industry would be allocated most of the CAT costs in perpetuity without a mechanism to limit the budget,[201] there is a statutory process for notice and comment and Commission review of proposed rule changes relating to fees, under Section 19(b) and Rule 19b–4.[202] In addition, the Proposed Amendment requires that the Fee Rate calculated by the Operating Committee twice per year be based on ''reasonably budgeted CAT costs'' [203] and that such budgeted CAT costs be composed of ''all reasonable fees, costs and expenses reasonably budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT.'' [204] The Operating Committee must demonstrate that their proposed budget and associated fees are reasonable, and the Participants must provide support for such reasonableness in their associated fee filings. If a Participant cannot demonstrate that their budgeted CAT costs are reasonable in a particular filing, following notice and public comment, then that would provide the Commission with grounds to suspend the filing and ultimately disapprove it, which should impose discipline or constraints on the fee setting process.

Further, the concerns expressed that the proposed allocation did not account for the costs already incurred by Industry Members to comply with the CAT or other fees paid by Industry Members to exchanges for other regulatory matters do not render that allocation unreasonable. Both Participants and Industry Members have incurred costs in adapting their operations to report to CAT as is required to achieve the benefits anticipated from the CAT. But the purpose of the funding model is to provide a framework for the recovery of a different set of costs—those incurred by the Participants' in developing and maintaining the CAT system. Section 11.1(c) of the CAT NMS Plan explicitly permits the Operating Committee to recover those costs, allowing it to ''take into account fees, costs and expenses . . . incurred by the Participants on behalf of the Company . . . and such fees, costs and expenses shall be fairly and reasonably shared among the Participants and Industry Members.'' [205] The decision to exclude the costs of compliance from this funding model is thus a reasonable one.

Further, the Commission does not base its finding with respect to the proposed allocation of costs between Participant and Industry Members on their respective responsibility for any

regulatory organization as: (1) constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule; (2) establishing or changing a due, fee, or other charge applicable only to a member; (3) concerned solely with the administration of the self-regulatory organization.

[194] 15 U.S.C. 78s(b)(3)(C).

[195] 15 U.S.C. 78s(b)(2)(B).

[196] *See* Section 6(b)(4); Section 15A(b)(5); Section 6(b)(5); Section 15A(b)(6). 15 U.S.C. 78f(b)(4); 15 U.S.C. 78f(b)(6); 15 U.S.C. 78o–3(b)(5); 15 U.S.C. 78o–3(b)(6). *See also e.g.,* Schedule A to the By-Laws of FINRA, Section 1(a) (stating ''FINRA shall, in accordance with this section, collect member regulatory fees that are designed to recover the costs to FINRA of the supervision and regulation of members, including performing examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities'').

[197] *See* Notice, *supra* note 7, 88 FR at 17108; *see also* CAT LLC July Response Letter at 8–9; *cf.* SIFMA May 2023 Letter at 8; Citadel July Letter at 20.

[198] Any efforts to recoup CAT costs will be subject to statutory and regulatory oversight as appropriate. Under the federal securities laws and FINRA rules, prices for securities and broker-dealer compensation are required to be fair and reasonable, taking into consideration all relevant circumstances. *See, e.g.,* Exchange Act Sections 10(b) and 15(c); FINRA Rules 2121 (Fair Prices and Commissions), 2122 (Charges for Services Performed), and 2341 (Investment Company Securities). *See also* FINRA Rule 3221 (Non-Cash Compensation). Broker-dealers are also required to disclose the fees they charge related to a transaction pursuant to Exchange Act Rule 10b–10. *See* 17 CFR 240.10b–10.

[199] *See* SIFMA AMG Letter at 2; FINRA April 2023 Letter at 6–7.

[200] *See* Citadel July Letter at 20; Citadel August Letter at 3.

[201] *See* SIFMA June 2023 Letter at 3, 4; Citadel July Letter at 2; FIA Letter at 2–5.

[202] *See supra* notes 192–196 and accompanying text.

[203] *See* proposed Section 11.3(a)(i)(A)(I) and proposed Section 11.3(a)(i)(A)(II).

[204] *See* proposed Section 11.3(a)(i)(C).

[205] CAT NMS Plan, *supra* note 2, at Section 11.1(c).

complexity in the markets. Regardless of the origin of that complexity, its existence contributes to the costs of CAT and the purpose of the funding model is to account for those current and future costs, not assess responsibility for the market structure. The Participants' decision to divide the costs evenly among the three parties who have primary roles related to the transaction is reasonable.

As explained below, the Commission agrees with CAT LLC's statements that, ''[t]he Executed Share Model . . . reflects a reasonable effort to allocate costs based on the extent to which different CAT Reporters participate in and benefit from the equities and options markets,'' [206] and is ''transparent, would be relatively easy to calculate and administer, and is designed not to have an impact on market activity because it is neutral as to the location and manner of execution.'' [207] The Participants considered, and have previously proposed, alternative allocations and funding models.[208] And the Commission acknowledges the alternative funding models and allocations suggested by commenters.[209] Each of those alternatives, as well as those suggested by commenters, has relative strengths and weaknesses. Similarly, the alternatives suggested by a commenter,[210] including maximum and minimum fees, appropriate calibrations for liquidity provision and consideration of additional provisions (*e.g.,* broker-dealer capital), have strengths and weaknesses. For example, imposing maximum and minimum fees would transfer costs from the largest members to the smallest members, distorting the economic incentives of the Executed Share Model. A similar distortion could arise to the extent market maker volume is discounted or otherwise calibrated or to the extent considering other metrics that are not necessarily correlated with the cost drivers of the CAT. Given the potential distortions that could occur with these alternatives, the Commission does not believe that the existence of those alternatives, or the remaining concerns identified by commenters individually or collectively, call into question the Proposed Amendment's satisfaction of the approval standard in Rule 608(b)(2),[211] or otherwise warrant a departure from the policy choices made by the Participants.

3. Executed Equivalent Shares

Under the Executed Share Model, a CAT fee would be charged with regard to each transaction in Eligible Securities [212] as reported in CAT Data based on executed equivalent shares.[213] A CAT Fee would be imposed with regard to transactions in Eligible Securities in the CAT Data regardless of whether the trade is executed on an exchange or otherwise than on an exchange.[214]

Proposed Section 11.3(a)(i)(B) of the CAT NMS Plan describes how executed equivalent shares would be counted for purposes of calculating CAT fees. Specifically, the Executed Share Model uses the concept of executed equivalent shares as the transactions subject to a CAT Fee involve NMS Stocks, Listed Options and OTC Equity Securities, each of which have different trading characteristics.[215] Proposed Section 11.3(a)(i)(B) would require the shares to be reasonably counted for each type of Eligible Securities in the following manner:

NMS Stocks. Under the Executed Share Model, each executed share for a transaction in NMS Stocks would be counted as one executed equivalent share.[216] Accordingly, proposed Section 11.3(a)(i)(B)(I) of the CAT NMS Plan would state that ''[f]or purposes of calculating CAT Fees, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (I) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share.'' [217]

Listed Options. Recognizing that Listed Options trade in contracts rather than shares, each executed contract for a transaction in Listed Options will be counted using the contract multiplier applicable to the specific Listed Option in the relevant transaction.[218] Typically, a Listed Option contract represents 100 shares; however, it may also represent another designated number of shares.[219]

OTC Equity Securities. Similarly, in recognition of the different trading characteristics of OTC Equity Securities as compared to NMS Stocks, the Executed Share Model would discount the share volume of OTC Equity Securities when calculating CAT Fees.[220] CAT LLC explained that many OTC Equity Securities are priced at less than one dollar—and a significant number are priced at less than one penny—per share and low-priced shares tend to trade in larger quantities.[221] Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks.[222] Because the Executed Share Model would calculate CAT Fees based on executed share volume, CAT Reporters trading OTC Equity Securities would likely be subject to higher fees than their market activity may warrant.[223] To address this potential concern, CAT LLC proposed that the Executed Share Model would count each executed share for a

[206] *See* Notice, *supra* note 7, 88 FR at 17087.

[207] *Id.*

[208] In the Proposed Amendment, CAT LLC stated that it considered but rejected a number of alternative approaches to the CAT funding model; specifically, an approach based on a CAT Reporter's cost burden on the CAT, a 50%–50% allocation of costs between Industry Members and Participant exchanges, a revenue-based funding model in which CAT Reporters would pay fees based on their revenue, a message traffic model in which both Industry Members and Participants would be assessed fees based on message traffic in the CAT, a sales value model in which fees would be calculated based on transaction sales models, an alternative allocation in which fees would only be allocated to the CEBS, and the 2018 and 2021 Fee Proposals, a model in which CAT LLC would allocate all costs among the Participants and permit each Participant to charge its own members as it deems appropriate, and a cost allocation based on a strict pro-rata distribution regardless of the type or size of CAT Reporters. *Id.* at 17105–06, 17117–19. *See also* CAT LLC May 2023 Response Letter at 8, where CAT LLC responded that SIFMA did not offer a reasoned basis for why a 50–50 allocation would satisfy the standards set forth in the Exchange Act. While alternative models have been suggested and considered, the proposed Executed Share Model meets the approval standard in Rule 608(b)(2).

[209] *See* FINRA April 2023 Letter at 5; SIFMA January 2023 Letter at 4. *See also* SIFMA May 2023 Letter at 8; SIFMA June 2022 Letter at 5–6; SIFMA October 2022 Letter at 4; Citadel July Letter at 3, 30, 31, 32.

[210] *See* Citadel August Letter at 5.

[211] 17 CFR 242.608(b)(2).

[212] The CAT NMS Plan defines an ''Eligible Security'' as including all NMS Securities and all OTC Equity Securities. *See* CAT NMS Plan, *supra* note 2, at Section 1.1. ''NMS Security'' is defined as ''any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in Listed Options.'' *Id.* ''OTC Equity Security'' is defined by the CAT NMS Plan as ''any equity security, other than an NMS Security, subject to prompt last sale reporting rules of a registered national securities association and reported to one of such association's equity trade reporting facilities.'' *Id.*

[213] *See* Notice, *supra* note 7, 88 FR at 17086.

[214] *Id.* at 17093.

[215] *Id.*

[216] *Id.*

[217] Proposed Section 11.3(a)(i)(B)(I).

[218] *See* Notice, *supra* note 7, 88 FR at 17093.

[219] *Id. See also* proposed Section 11.3(a)(i)(B)(II).

[220] *See* Notice, *supra* note 7, 88 FR at 17093.

[221] *Id.*

[222] In an example provided by CAT LLC, based on data from 2021, (1) the average price per executed share of OTC Equity Securities was $0.072 and the average price per executed share for NMS Stocks was $49.51; and (2) the average trade size for OTC Equity Securities was 63,474 and the average trade size for NMS Stocks was 166 shares. Trades in OTC Equity Securities accounted for 77% of the number of all equity shares traded, but only 0.51% of the notional value of all equity shares traded. *Id.* at 17093, n.36.

[223] *Id.* at 17093.

transaction in OTC Equity Securities as 0.01 executed equivalent shares.[224]

a. Executed Equivalent Share Volume

CAT LLC had represented that a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks,[225] that trades in OTC Equity Securities accounted for 77% of the number of all equity shares traded, but only 0.51% of the notional value of all equity shares traded,[226] and that under the Executed Share Model, CAT Reporters trading OTC Equity Securities would likely be subject to higher fees than their market activity may warrant.[227] CAT LLC also explained the analysis it undertook to determine to count each executed share for a transaction in OTC Equity Securities as 0.01 executed equivalent shares, stating the discount was the result of an analysis of several different metrics comparing the markets for OTC Equity Securities and NMS Stocks. CAT LLC stated that ''(1) the ratio of total notional dollar value traded for OTC Equity Securities to OTC Equity Securities and NMS Stocks was 0.051%; (2) the ratio of total trades in OTC Equity Securities to total trades in OTC Equity Securities and NMS Stocks was 0.90%; and (3) the ratio of average share price per trade of OTC Equity Securities to average share price per trade for OTC Equity Securities and NMS Stocks was 0.065%.'' [228] For ease of application and because the calculations involve averages, CAT LLC decided to round the metrics to 1%.[229]

In support of the use of executed equivalent shares to allocate costs under the Executed Share Model, CAT LLC explained that ''trading activity provides a reasonable proxy for cost burden on the CAT, and therefore is an appropriate metric for allocating CAT costs among CAT Reporters.'' [230] CAT LLC stated that it is not feasible to determine the specific cost burden of each CAT Reporter on the CAT, explaining that ''[t]he computation of a specific CAT Reporter's burden on the CAT is complicated by the many inter-related factors that contribute to CAT costs, including message traffic, data processing, storage, the complexity of reporting requirements, reporting timelines, infrastructure, connectivity and more.'' [231] CAT LLC added that increased trading activity correlates with an increased cost burden on the CAT and Industry Members are generally engaged in effecting transactions in the market, so executed share volume would be an appropriate metric for the allocation of CAT costs.[232] CAT LLC stated that this conclusion is consistent with the Commission's prior recognition of the use of transaction volume to set regulatory fees.[233] Additionally, CAT LLC stated that technology costs dominate all CAT costs, with compute costs comprising more than half of all technology costs, and ''[w]hile [compute costs] are related in part to message traffic, they are driven by the stringent performance timelines, data complexity and operational requirements in the CAT NMS Plan.'' [234] This was one of the reasons CAT LLC decided to change from using message traffic to calculate CAT fees using executed equivalent share volume.[235]

Commenters questioned the support for the use of executed share volume instead of message traffic, which was previously proposed in prior funding models.[236] FINRA stated that the Proposed Amendment does not explain why the use of executed share volume as the basis of the cost allocation methodology, instead of message traffic, is equitable.[237] FINRA explained that in prior models, message traffic was the key proxy for cost generation used to align CAT fees with CAT costs, but the Executed Share Model would base its cost allocation methodology entirely on executed share volume.[238] FINRA stated that the Participants' argument that executed share volume is related to cost generation is not enough to demonstrate that its use is reasonable and equitable.[239]

Another commenter stated that the Operating Committee cannot explain why the proposed allocation to Industry Members is equitable, noting that it previously stated that charging Industry Members based on message traffic was the most equitable means of establishing fees.[240] The commenter stated that allocating costs among Industry Members based on share volume is inconsistent with the Exchange Act.[241] The commenter stated that there is no evidence to support the Operating Committee's assertion that trading activity is a reasonable proxy for cost burden on the CAT, explaining that the Operating Committee has stated before that CAT Data processing requirements and message traffic are significant drivers of CAT costs. The same commenter stated that, according to one Participant, options activity creates a greater cost burden than equities trading volume and that the Proposed Amendment does not accurately describe the sources of CAT's cost burdens.[242] The commenter stated that the CAT Operating Committee must demonstrate how the proposed allocation would not unfairly discriminate against equities market participants and compare equities and options activity with respect to (i) their cost burden on the CAT and (ii) the allocation of CAT costs to Industry Members.[243] The commenter stated that if the equities markets are subsidizing options activity, this could have broad impacts on equity market liquidity, competition and efficiency that must be assessed under the Exchange Act.[244]

Further, the commenter stated that allocating costs based on volume would result in costs being mostly allocated to ''an extremely small group of broker-dealers,'' which would unduly burden competition.[245] The commenter stated that the Proposed Amendment also lacks a discussion of the impact of this allocation on market competition, efficiency and liquidity, but that the Operating Committee recognized in the Proposed Amendment that prior proposals, where message traffic was a metric used for fee allocation, could impose an outsized financial impact on certain Industry Members.[246]

Additionally, FINRA objected to the statement in the Proposed Amendment that ''trading activity provides a reasonable proxy for cost burden on the CAT, and therefore is an appropriate metric for allocating CAT costs among CAT Reporters.'' [247] The commenter stated that this statement is inconsistent with information that demonstrates that volume from FINRA's trade reporting facilities (''TRFs'') contributes ''a very small percentage of annual CAT compute and storage costs.'' [248] FINRA stated, ''. . . despite the minimal data compute and storage costs for

[224] *See* proposed Section 11.3(a)(i)(B)(III).

[225] *See* Notice, *supra* note 7, 88 FR at 17093.

[226] *Id.* at 17093, n.36.

[227] *Id.* at 17093.

[228] *Id.*

[229] *Id.*

[230] *See* Notice, *supra* note 7, 88 FR at 17103.

[231] *Id.* at 17105; *see also id.* at 17103.

[232] *Id.* at 17105.

[233] *Id.*

[234] *Id.*

[235] *See* Notice, *supra* note 7, 88 FR at 17105.

[236] *See* FINRA June 2022 Letter at 3, 4; Citadel July Letter at 10.

[237] *See* FINRA June 2022 Letter at 3.

[238] *Id.*

[239] *Id.* at 4.

[240] *See* Citadel July Letter at 10.

[241] *Id.* at 19.

[242] *Id.* at 18, 19. *See also* Citadel August Letter at 4.

[243] *See* Citadel August Letter at 4.

[244] *Id.*

[245] Citadel July Letter at 19.

[246] *Id. See also* Citadel August Letter at 2–3.

[247] FINRA May 2023 Letter at 2 (quoting Notice, *supra* note 7, 88 FR at 17103.)

[248] FINRA May 2023 Letter at 2.

transactions reported to the TRF, FINRA would be assessed an estimated 34% of the total CAT costs to be borne amongst the 25 Participants, and more than all options exchanges combined,'' therefore it cannot support the Participants' assertion that trading activity is a reasonable proxy for cost burden.[249] FINRA stated that the Proposed Amendment ''fails to provide for reasonable fees that are equitably allocated and not unfairly discriminatory, does not reflect a reasonable approach to allocating costs amongst the Participants, nor does it transparently or accurately present information regarding the true sources of cost burdens on the CAT.'' [250]

FINRA further stated that the Executed Share Model is inconsistent with the ''cost alignment'' funding principle in Section 11.2(b) of the CAT NMS Plan, which requires the Participants to seek to establish an allocation of costs that takes into account distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon Company resources and operations.[251] FINRA stated that ''the Proposal fails to establish a sufficient nexus between executed share volume and the technology burdens that generate CAT costs and fails to relate each reporter group's allocation to the burden that each reporter group imposes on CAT.'' [252]

In response to FINRA's comment raising concerns about the use of trading activity as a proxy for costs,[253] CAT LLC stated that the Proposed Amendment would provide an appropriate approach for allocating CAT costs because Industry Member activity is generally for the purpose of effecting transactions, and trading activity impacts various factors driving CAT costs, such as storage, data processing and message traffic.[254] CAT LLC also stated that the Exchange Act does not require fees to be directly correlated with the costs created by the person charged the fee.[255] CAT LLC stated that it is difficult to determine the precise cost burden created by each CAT Reporter on the CAT, and believes trading activity is a reasonable proxy for cost burden on the CAT.[256]

CAT LLC responded to the commenter's statement that the proposed allocation is inconsistent with the cost alignment principles of the CAT NMS Plan by noting that the Proposed Amendment incorporates the concept of cost burden in at least two ways.[257] Specifically, CAT LLC stated that it does so because ''the allocation of CAT costs contemplates the effect of Industry Member activity on the cost of the CAT. . . and because trading activity provides a reasonable proxy for cost burden on the CAT, trading activity is an appropriate metric for allocating CAT costs among CAT Reporters.'' [258] CAT LLC added that because there are other examples of trading activity-based fees, the Executed Share Model would not be novel or unique.[259]

One commenter also stated that the Proposed Amendment made no adjustments for sub-dollar trading activity in NMS stocks, when adjustments were made to volume in OTC Equity Securities to adjust for the large number of shares transacted in sub-dollar securities.[260] The commenter also stated that it is arbitrary, capricious, and unfairly discriminatory for the CAT Operating Committee to significantly adjust executed share volumes for sub-dollar OTC Equity Securities but not to do the same for sub-dollar NMS stocks, as retail investor transactions will be allocated a disproportionate percentage of total CAT costs simply due to the securities traded.[261] The commenter stated that the CAT Operating Committee must explain why it proposes to treat these securities differently and analyze the impact on retail investors.[262] The commenter also stated that since fractional shares would be rounded up to one share, the result would overstate volume.[263] The commenter stated that the Proposed Amendment thus discriminates against Industry Members that handle retail orders because of the amount of retail activity in sub-dollar stocks and fractional share trading.[264] The commenter stated that the Proposed Amendment does not explain why volume by shares was chosen over notional volume, or address its impact on specific Industry Members, investors, or overall market competition, efficiency and liquidity.[265]

CAT LLC proposed to delete the requirement in existing Section 11.2(b) of the CAT NMS Plan to take into account ''distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon Company resources and operations'' in establishing the funding of the Company.[266] CAT LLC explained that this requirement is related to using message traffic and market share in the calculation of CAT fees, as message traffic and market share were metrics related to the impact of a CAT Reporter on the Company's resources and operations.[267] CAT LLC explained that the requirement is no longer relevant because the proposed Executed Share Model uses the executed equivalent shares metric instead of message traffic and market share.[268]

With respect to the deletion in Section 11.2(b) of the requirement that, when establishing the funding of the CAT, the Operating Committee must take into account ''distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon Company resources and operations,'' FINRA stated that the Participants have proposed to delete the language in Section 11.2(b) because the proposed Executed Share Model is inconsistent with the language.[269] FINRA stated that the Proposed Amendment ''seeks to amend the core funding principles to align with an unjustified allocation methodology.'' [270] FINRA stated that any changes to the funding principles ''must be well-reasoned and transparent and must continue to support the achievement of a fair and equitable outcome.'' [271]

In the Commission's view, the use of executed equivalent share volume as the basis of the proposed cost allocation methodology is reasonable and consistent with the approach taken by the funding principles of the CAT NMS Plan.[272] The proposed use of executed equivalent shares would continue to incorporate the concept of cost

[249] *Id. See also* FINRA April 2023 Letter at 8.

[250] FINRA May 2023 Letter at 4.

[251] *Id. See also* FINRA April 2023 Letter at 7–9; Section 11.2(b) of the CAT NMS Plan. The Proposed Amendment would amend Section 11.2(b). *See* proposed Section 11.2(b); *see also infra* Section III.A.8 (Additional Changes from Original Funding Model).

[252] FINRA June 2022 Letter at 4.

[253] *See* FINRA May 2023 Letter at 2.

[254] *See* CAT LLC July 2023 Response Letter at 34.

[255] *Id.*

[256] *Id.*

[257] CAT LLC May 2023 Response Letter at 7.

[258] *Id.*

[259] *Id.*

[260] *See* Citadel July Letter at 20.

[261] *See* Citadel August Letter at 4–5.

[262] *Id.* at 5.

[263] *See* Citadel July Letter at 20.

[264] *Id. See also* Citadel August Letter at 4–5.

[265] *See* Citadel July Letter at 20. *See also* Citadel August Letter at 5.

[266] *See* proposed Section 11.2(b).

[267] *See* Notice, *supra* note 7, 88 FR at 17099.

[268] *Id.*

[269] *See* FINRA June 2022 Letter at 4; *see also* FINRA April 2023 Letter at 7.

[270] FINRA June 2022 Letter at 4. The commenter states that the Executed Share Model instead places the greatest emphasis on the funding principle relating to the ''ease of billing and other administrative functions,'' favoring that principle over cost alignment. *Id.* at 5.

[271] *Id.;* FINRA April 2023 Letter at 8–9.

[272] *See* Section 11.2(b) of the CAT NMS Plan.

alignment because trading activity, as reflected through executed equivalent share volume, would, as CAT LLC explained, correlate with the cost burden on the CAT.[273] It may not be possible to directly calculate each CAT Reporter's cost burden on the CAT due to the many factors impacting CAT costs, such as data processing, storage, reporting timelines and requirements, and connectivity. But executed equivalent share volume is a reasonable proxy for those costs because it is a result of trading activity, which CAT LLC explained impacts various CAT cost drivers, such as storage, data processing and message traffic.[274] In addition, because the proposed use of executed equivalent share volume would preserve the cost alignment principle, while no longer relying on message traffic, the deletion of the requirement in Section 11.2(b) of the CAT NMS Plan that the Operating Committee, in allocating costs, take into account ''distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon Company resources and operations'' [275] is reasonable.

In response to the commenter that urged the CAT Operating Committee to demonstrate how the proposed allocation would not unfairly discriminate against equities market participants by subsidizing CAT costs related to options market activity,[276] the Commission believes that subsidization of options market activity likely is reduced due to other CAT cost burdens, such as those relating to data processing (such as equity linkage processing, which the Commission understands is more complex than options order linkage processing, and thus more costly),[277] imposed on the CAT by equity market activity. The Commission, however, does not believe the failure to eliminate the potential subsidization of options market activity (and any potential attendant impacts on liquidity, competition and efficiency) renders the Participants' Funding Model proposal inconsistent with the Exchange Act. The Commission does not believe it is possible for the Participants to predict with certainty how the magnitude of each driver of CAT costs will change over time. To the extent the other costs noted above exceed, for example, the subsidy accorded to options market participants when calculating their executed equivalent shares, there may be no subsidy or even a reverse subsidy from options to equities markets. When the relative magnitudes of these cost drivers change, the amount of any subsidy changes. In light of the potential for the cost drivers to change over time, the Commission believes that the Participants' proposal is reasonable.

The Proposed Amendment's treatment of sub-dollar NMS stocks and fractional shares is appropriate. The Commission does not believe that the Participants' failure to discount sub-dollar NMS stocks renders the Proposed Amendment inconsistent with the Exchange Act. The Commission acknowledges one commenter's statement that retail investors could be allocated a disproportionate percentage of total CAT costs due to the lack of a discount for sub-penny NMS stocks.[278] However, treating a subset of NMS stocks differently from NMS securities could introduce unnecessary complexity or administrative burdens to the extent an NMS stock price falls or rises above a dollar. It is therefore reasonable for the Proposed Amendment to treat all NMS stocks the same, even though certain sub-dollar NMS stocks and fractional shares might have characteristics similar to OTC Equity Securities. Additionally, in response to the commenter's statement that since fractional shares would be rounded up to one share, the result would overstate volume,[279] the Commission notes that CAT fees will be based on the data contained in the transaction reports and transaction reports do not provide for fractional quantities; therefore, CAT fees cannot be calculated using fractional shares or fractional share components of executed orders at this time.[280] CAT LLC stated that if FINRA's equity transaction reporting facilities or the exchanges report transactions in fractional shares in the future, then the calculation of CAT fees would also reflect fractional shares.[281] In response to the comment that stated that the Proposed Amendment does not explain why volume by shares was chosen over notional volume,[282] calculating the notional value of stock introduces additional complexity as the notional value would have to be calculated and would depend on the value of the execution or trade, whereas the number of executed shares is reported and, in the cases of options for example, is based on a known multiplier (1/100). While the Commission does not disagree that using executed notional shares may offer advantages and may lessen any discrimination, the Commission believes that the Proposed Amendment's use of executed shares is administratively easier, less prone to error, and thus for these reasons and the reasons set forth above,[283] is a reasonable proxy for allocating the cost of the CAT.

The Commission also believes that CAT LLC's explanation that increased trading activity correlates with an increased cost burden on the CAT is reasonable and that executed share volume is a reasonable proxy for a CAT Reporter's cost burden on the CAT [284] because increased trading activity impacts message traffic, but also data processing and storage costs.[285] The Original Funding Model would have used message traffic and market share to assess CAT fees on Industry Members and Execution Venues, respectively.[286] CAT LLC expressed its belief that the use of executed equivalent share volume would be an improvement on the Original Funding Model's use of message traffic,[287] explaining that the use of executed equivalent share volume would result in fees tied to transactions (which CAT LLC stated is the ''traditional source of revenue for Industry Members'' [288]), that the resulting CAT fees would not adversely impact market makers, and that the Executed Share Model is simple to understand and to implement.[289] CAT LLC stated that Industry Member revenue is often driven by transactions, but ''[b]ecause message traffic is separate from whether or not a transaction occurs, fees based on message traffic may not correlate with common revenue or fee models,'' [290] which could negatively impact certain Industry Members in a significant way.[291] CAT LLC stated that use of message traffic to calculate fees for Industry Members could adversely impact market makers because they

[273] CAT LLC May 2023 Response Letter at 7.

[274] *Id. See also* Notice, *supra* note 7, 88 FR at 17105; *see also id.* at 17103.

[275] *See* Notice, *supra* note 7, 88 FR at 17105; *see also id.* at 17103.

[276] *See* Citadel August Letter at 4.

[277] *See infra* notes 1075–1082 and accompanying text.

[278] *See* Citadel August Letter at 4–5.

[279] *See* Citadel July Letter at 20.

[280] *See* Notice, *supra* note 7, 88 FR at 17089.

[281] *Id.* at 17089, n.23.

[282] *See* Citadel July Letter at 20. *See also* Citadel August Letter at 5.

[283] *See supra* notes 272–275 and accompanying text.

[284] *See* Notice, *supra* note 7, 88 FR at 17105; *id.* at 17101–03.

[285] *Id.* at 17105.

[286] *See* CAT NMS Plan, *supra* note 2, at Section 11.3(a) and (b).

[287] *See* Notice, *supra* note 7, 88 FR at 17102–03. The Original Funding Model uses message traffic as the basis of Industry Member CAT fees. *See* CAT NMS Plan, *supra* note 2, at Section 11.3(b).

[288] Notice, *supra* note 7, 88 FR at 17103.

[289] *Id.*

[290] *Id.* at 17102.

[291] *Id.*

generally create high levels of message traffic.[292] We agree with CAT LLC regarding the benefits of the Executed Share Model and the drawbacks of the Original Funding Model, and thus believe that the decision to replace the use of message traffic to calculate CAT fees with executed equivalent share volume in the Executed Share Model is reasonable.

The Commission acknowledges that executions do not take place on FINRA; however, the CAT NMS Plan already categorizes FINRA as an Execution Venue because it has trades reported by its members to its TRFs for reporting transactions effected otherwise than on an exchange. Thus, treatment of FINRA as an Execution Venue is not a change to the existing CAT NMS Plan.[293] Additionally, this allocation of fees to FINRA is similar to how Section 31 fees are assessed on FINRA.[294]

Moreover, the Executed Share Model does not change the criteria used to charge Execution Venues (market share).[295] While there are differences in how the CAT fees would be allocated among the Participants under the Executed Share Model and the existing Original Funding Model, under the Executed Funding Model, as in the Original Funding Model, the fees charged to Participants will continue to be based upon the level of market share of each Participant.[296] The Original Funding Model approved by the Commission would have assessed CAT fees on Execution Venues (which would include the Participants) [297] based on market share determined by the share volume for a national securities exchange and determined by reported share volume of trades for a national securities association (*i.e.,* FINRA) that had trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities.[298] Additionally, this allocation is similar to how Section 31 fees are assessed on the exchanges and FINRA. FINRA's allocation of CAT fees under the Executed Share Model will continue to be based on its off-exchange market share.

The Commission recognizes that the proposed use of executed equivalent share volume is not a perfect proxy for CAT costs, but believes it is nonetheless a reasonable proxy. The costs of CAT are attributable to a number of factors, such as message traffic, storage, and data processing costs, and that for these reasons, the Commission understands that it is difficult to calculate each CAT Reporter's individual cost burden on the CAT. Additionally, there are other operational costs of the CAT that cannot be easily attributed to a particular CAT Reporter and that need to be funded, such as costs for CAT NMS Plan requirements related to intake capacity,[299] data search tools [300] and data security.[301] Based on the breadth of CAT costs, it is not feasible to calculate the cost burden on CAT of each CAT Reporter. A reasonable proxy for CAT cost burden must therefore be used. As discussed above, the Commission believes the proposed use of executed equivalent share volume is a reasonable method of approximating the cost burden of CAT.[302] Additionally, CAT LLC stated that the proposed Executed Share Model would not unfairly burden or favor a product or product type because the model would recognize the different types of securities by counting executed equivalent share volume differently for NMS Stocks, Listed Options and OTC Equity Securities.[303] The proposed treatment of these different types of securities would result in the equitable allocation of reasonable CAT fees across these securities. The Executed Share Model would count each executed contract for a transaction in Listed Options using the contract multiplier applicable to the specific Listed Option in the relevant transaction,[304] which is appropriate because a Listed Option contract typically represents 100 shares, or it could represent another designated number of shares, and since Listed Options trade in contracts instead of shares, they would need to be converted into shares for purposes of calculating the executed equivalent share volume of a transaction in Listed Options. For OTC Equity Securities, the Executed Share Model would count each executed share for a transaction in OTC Equity Securities as 0.01 executed equivalent shares,[305] which is appropriate because CAT LLC represented that this amount was a result of an analysis it conducted of several different metrics comparing the markets for OTC Equity Securities and NMS Stocks, specifically total notional dollar value, total trades, and average share price per trade.[306] Additionally, since transactions in OTC Equity Securities typically are priced below one dollar, or even one penny, and tend to trade in larger quantities, this treatment is appropriate to prevent CAT Reporters trading OTC Equity Securities from being assessed higher CAT fees than their activity would deserve.

b. Options vs. Equities

The equal allocation of Participant CAT fees to Participants, regardless of whether they are transacting in options or in equities, is reasonable. The Original Funding Model would have divided Participant CAT fees by Execution Venues that execute transactions (or in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange) in NMS Stocks or OTC Equity Securities and by Execution Venues that execute transactions in Listed Options.[307] The Executed Share Model instead assesses a CAT fee based purely on executed equivalent share volume.[308] CAT LLC explained that the use of equivalent executed share volume is designed to

[292] *Id.* at 17103.

[293] *See* CAT NMS Plan Approval Order, *supra* note 2, 81 FR at 84793; CAT NMS Plan, *supra* note 2, at Section 1.1. (defining ''Executing Venues'').

[294] 15 U.S.C. 78ee; Section 31 of the Securities Exchange Act requires each national securities exchange and national securities association to pay transaction fees to the Commission. Specifically, Section 31(c) requires each national securities association to pay to the Commission fees based on the aggregate dollar amount of covered sales transacted by or through any member of the association other than on an exchange. 15 U.S.C. 78ee(c). Section 31(a) permits the Commission to collect transaction fees and assessments designed to recover the costs to the Government of the annual appropriation to the Commission by Congress. 15 U.S.C. 78ee(a).

[295] *See* CAT NMS Plan Approval Order, *supra* note 2, 81 FR at 84793–97; CAT NMS Plan, *supra* note 2, at Section 11.2, Section 11.3.

[296] *Id.*

[297] *See supra* note 15.

[298] *See* CAT NMS Plan, *supra* note 2, at Section 11.3(a)(i).

[299] In the CAT NMS Plan Notice, the Commission said that it preliminarily believed that intake capacity level is likely to be a primary cost driver for the Central Repository. *See* Securities Exchange Act Release No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016), 81 FR at 30770.

[300] *See* CAT NMS Plan, *supra* note 2, at Appendix C, Section 8.1–8.2.

[301] *Id.* at Appendix D, Section 4.

[302] *See supra* notes 271–274 and accompanying text.

[303] *See* Notice, *supra* note 7, 88 FR at 17116.

[304] *Id.* at 17093. A Listed Option contract typically represents 100 shares, or it could represent another designated number of shares. *Id.*

[305] *See* proposed Section 11.3(a)(i)(B)(III).

[306] *See supra* notes 227–229 and accompanying text.

[307] *See* CAT NMS Plan, *supra* note 2, at Section 11.3(a)(i), (ii).

[308] The Executed Share Model would count executed equivalent share volume differently for NMS Stocks, OTC Equity Securities and Listed Options for purposes of calculating a CAT fee. CAT LLC explains that the proposed approach ''would not favor or unfairly burden any one type of product or product type.'' *See* Notice, *supra* note 7, at 17116. *See also supra* Section III.A.3.

normalize options and equities in the calculation of fees, and to recognize and address the different trading characteristics of different types of securities by counting executed equivalent share volume differently for Listed Options and for equities.[309] The use of executed equivalent share volume and, in particular, the different weights assigned to equities versus options, are designed to result in an equitable treatment of the equities and options markets. The proposed treatment of these different types of securities reasonably equalizes the CAT fees across these securities. The Executed Share Model would count each executed contract for a transaction in Listed Options using the contract multiplier applicable to the specific Listed Option in the relevant transaction,[310] which is appropriate because one options contract typically represents 100 shares.

c. FINRA Allocation

Under the Executed Share Model, because FINRA is the Participant primarily responsible for oversight of off-exchange securities trading activity,[311] FINRA will likely have greater executed equivalent share volume than other Participants [312] and thus will be responsible for a significant portion of total CAT fees. In the Proposed Amendment, CAT LLC stated that the size of FINRA's fee is calculated based on the activity in the over-the-counter market.[313] CAT LLC stated that the executed equivalent share volume for over-the-counter trades in Eligible Securities in 2021 was 1,361,484,729,008 out of a total volume of 3,963,697,612,395 executed equivalent shares for trades in Eligible Securities.[314] CAT LLC stated that approximately 34% of the executed equivalent share volume in Eligible Securities took place in the over-the-counter market.[315]

CAT LLC stated that the assessment of a CAT fee on FINRA in the same manner as the other Participants would not result in a burden on competition for FINRA or for Industry Members engaging in off-exchange activity.[316] CAT LLC also stated that FINRA and the exchanges should not be evaluated differently based upon the potential for a particular Participant to recoup its CAT fees through charging fees to its members or through revenue-generating activity other than passing its fees through to its members.[317] CAT LLC stated that each Participant, including FINRA, can choose to charge its members fees to fund the Participant's CAT fees.[318] Additionally, CAT LLC stated that FINRA, just like the exchange Participants, has revenue sources other than membership fees,[319] explaining that FINRA generates significant revenues via Regulatory Services Agreements (''RSAs'') with the exchanges, among other sources.[320] According to CAT LLC, these other revenue sources may be used to pay CAT fees, and, if they are used, would not lead to an increase in fees for Industry Members.[321]

Certain commenters objected to the proposed allocation of Participant CAT fees to FINRA.[322] A subset of these commenters objected to the allocation to FINRA of 34% of the total CAT costs [323] to be borne by the Participants.[324] FINRA stated that this amount was a ''disproportionate share of CAT costs,'' [325] especially as FINRA does not operate a market,[326] and that the Proposed Amendment would place an undue burden on FINRA.[327] FINRA stated that its share was ''more than double that of the next highest Participant and $4 million more than all option exchanges combined.'' [328] FINRA also stated that its allocation would largely be based on transaction volume reported to the TRF; however, FINRA stated that TRF transactions generate fewer costs for the CAT,[329] as opposed to options activity, but that only 25% of total Participant CAT fees would be assessed for options activity, while the remaining 75% would be assessed for equities activity.[330] FINRA stated that ''. . . FINRA would be assessed an estimated 34% of the total CAT costs to be borne amongst the 25 Participants, and more than all options exchanges combined.'' [331]

FINRA stated that, unlike the exchange Participants, transactions are not executed on a FINRA marketplace and FINRA does not receive commercial revenue for those transactions.[332] FINRA explained that ''while the NMS stock allocation to FINRA under the Funding Model is based on transactions that are reported to FINRA [TRFs], these transactions are not executed on a FINRA marketplace and FINRA does not retain commercial revenues from those transactions'' [333] unlike the exchanges that operate each FINRA TRF, which retain the market data and trade reporting revenue of the TRF.[334] FINRA stated that, unlike itself, these exchanges would thus have a revenue stream related to the transactions that would be assessed a CAT fee, and that also, unlike FINRA, exchanges generate revenue from listings and proprietary data feeds in NMS securities.[335] FINRA also stated that FINRA members can report over-the-counter transactions in listed stocks to the FINRA Alternative Display Facility, although most transactions are reported to a TRF.[336]

FINRA further stated that it cannot necessarily recoup its costs through RSAs that it has entered into with

[309] *See* Notice, *supra* note 7, 88 FR at 17108.

[310] *Id.* at 17093.

[311] *See* Securities Exchange Act Release No. 95388 (July 29, 2022), 87 FR 49930 (Aug. 12, 2022), at 49931 (stating that FINRA historically has overseen off-exchange securities trading activity and that ''the Exchange Act's statutory framework places SRO oversight responsibility with a [national securities association] for trading that occurs elsewhere than an exchange to which a broker or dealer belongs as a member.''), 49932 (stating that an exchange would primarily have SRO oversight responsibility of its members and their trading on the exchange, while SRO oversight of other trading activity, such as off-exchange trading, is primarily the responsibility of a national securities association).

[312] *See* Notice, *supra* note 7, 88 FR at 17107.

[313] *Id.*

[314] *Id.*

[315] *Id.*

[316] *Id.*

[317] *Id. See also* CAT LLC May 2023 Response Letter at 9.

[318] *See* Notice, *supra* note 7, 88 FR at 17107.

[319] *Id.* at 17108.

[320] *Id.*

[321] *Id.*

[322] *See* FINRA May 2023 Letter; FINRA April 2023 Letter; FINRA June 2022 Letter; SIFMA May 2023 Letter; SIFMA June 2022 Letter; SIFMA October 2022 Letter. One of the commenters supported the points raised in the FINRA April 2023 Letter that stated that the Proposed Amendment would result in the inequitable allocation of fees and should be disapproved. *See* SIFMA May 2023 Letter at 2. Another commenter supported these points and stated that the fact that one of the biggest Participants was so strongly opposed to the plan was evidence that it should be disapproved. *See* Virtu Letter at 3.

[323] One commenter stated that this estimate is based on 2021 data and urged the Commission to require the Participants to amend the Proposed Amendment to include the 2022 data and fee allocation estimates, stating that the CAT budget has grown significantly from 2021. *See* FINRA April 2023 Letter at 3, 4–5. In its response to comments, CAT LLC provided the Historical CAT Costs for 2022. The total operating expenses increased from $144,415,268 in 2021 to $181,107,294 for 2022. *See* Notice, *supra* note 7, 88 FR at 17111; CAT LLC May 2023 Response Letter at 13.

[324] *See* FINRA May 2023 Letter at 2; FINRA April 2023 Letter at 3; SIFMA May 2023 Letter at 2.

[325] FINRA April 2023 Letter at 3.

[326] *Id.*

[327] *See* FINRA June 2022 Letter at 6.

[328] FINRA April 2023 Letter at 4; *see also* FINRA June 2022 Letter at 5.

[329] *See* FINRA April 2023 Letter at 8, n.23. The commenter also stated that ''TRF volume contributes to only a very small percentage of annual CAT compute and storage costs.'' FINRA May 2023 Letter at 2.

[330] *See* FINRA April 2023 Letter at 8, n.23; FINRA May 2023 Letter at 2.

[331] FINRA May 2023 Letter at 2.

[332] *See* FINRA April 2023 Letter at 3.

[333] *Id.*

[334] *Id.*

[335] *Id.* at 4.

[336] *Id.* at 3, n.8.

certain exchanges [337] because the exchanges must first agree to be charged CAT costs under the RSAs; therefore, RSAs would not be a reliable source of CAT funding for FINRA.[338] Additionally, FINRA questioned CAT LLC's statement that the Proposed Amendment ''reflects a reasonable effort to allocate costs based on the extent to which different CAT Reporters participate in and benefit from the equities and options markets.'' [339] Specifically, FINRA asked how this explains the size of its allocation [340] and noted that this statement ''conflates the costs to create and operate the CAT with the usage of CAT data.'' [341]

In the Proposed Amendment, CAT LLC contested the view that FINRA should not be treated as a market center for CAT funding purposes merely because FINRA is not treated as a market center for governance purposes under the National Market System Plan Regarding Consolidated Equity Market Data (''CT Plan'').[342] CAT LLC explained that the purpose and implementation of the CT Plan and the CAT NMS Plan are different.[343] CAT LLC stated that while the CAT NMS Plan explicitly contemplates charging fees to all Participants, including FINRA,[344] and that the CAT is solely for regulatory purposes, providing a regulatory system to facilitate the performance of the self-regulatory obligations of all of the Participants, including the exchanges and FINRA,[345] ''[i]n contrast, the CT Plan governs the public dissemination of real-time consolidated equity market data for NMS stocks.'' [346]

Certain commenters expressed concern about alleged arbitrary treatment of FINRA by the other Participants of the CAT NMS Plan.[347] FINRA believes that its ''outsized allocation'' [348] was because of its limited voting power, only having one out of 25 votes on the Operating Committee as it does not control, nor is under common control with, any other Participant.[349] Another commenter stated that the current CAT NMS Plan voting structure results in the unfair and inequitable treatment of FINRA.[350] Both commenters believe that the exchange Participants treat FINRA arbitrarily to benefit themselves, treating FINRA as a market center in the CAT NMS Plan while not as a market center under the CT Plan, which governs the public dissemination of real-time consolidated market data for national market system stocks.[351] One commenter stated that the Participants do not treat FINRA as a market center under the CT Plan in order to limit FINRA's voting power and therefore its ability to decide how to allocate market data revenue.[352] The commenter stated that this example demonstrates the ''. . . inherent conflicts of interest that for-profit exchanges have in operating as SROs. . .'' [353]

Certain commenters suggested that the Commission issue an order soliciting comment on whether the Operating Committee should be reorganized consistent with the CT Plan.[354] One commenter stated, ''[w]e believe such a governance structure for the CAT would help facilitate a fairer structure for the views of the SROs and industry to be heard and incorporated into any further CAT funding proposal by reducing the ability of the largest exchange groups to dictate the terms of any CAT funding proposal over the objections of other SRO Participants and the industry.'' [355]

Commenters also believe the allocation to FINRA would increase the allocation to Industry Members.[356] FINRA stated that because it relies on regulatory fees from its members for funding, it must increase its member fees in order to fund CAT costs that it cannot recover from contractual arrangements with TRF business members.[357] FINRA stated that the Proposed Amendment does not adequately analyze the allocation's impact, including whether the allocation would increase Industry Members' allocation of total costs beyond two-thirds.[358] FINRA dismissed as inadequate the Participants' argument that Industry Members can pass through their costs, stating that the Proposed Amendment lacks a detailed description of and transparency into how the fees may be passed on to customers.[359] Another commenter stated that the Participants ''do not address the fact that the Executed Share Model for Prospective CAT Costs allocates two-thirds of CAT costs to Industry Members for exchange transactions and more for off-exchange transactions'' [360] because they cannot demonstrate that the proposed allocation results in an equitable allocation of reasonable fees.[361] The commenter stated that Industry Members, who would be subject to two-thirds of Prospective CAT Costs under the Executed Share Model, already pay FINRA's operating costs through regulatory fines and fees;

[337] This statement was made in response to a statement in the Proposed Amendment that FINRA, like the exchange Participants, has revenue sources other than membership fees, giving as an example the RSAs. *See* Notice, *supra* note 7, 88 FR at 17107.

[338] *See* FINRA April 2023 Letter at 4.

[339] *Id.* at 7.

[340] *Id.*

[341] *Id.; see also* FINRA June 2022 Letter at 6.

[342] *See* Notice, *supra* note 7, 88 FR at 17108. *See also* Joint Industry Plan; Order Approving, as Modified, a National Market System Plan Regarding Consolidated Equity Market Data; Securities Exchange Act Release No. 92586 (Aug. 6, 2021), 86 FR 44142 (Aug. 11, 2021) (File No. 4–757) (''Order Approving the CT Plan''). The Order Approving the CT Plan was vacated by the D.C. Circuit on July 5, 2022. *See The NASDAQ Stock Market LLC et al.* v. *SEC,* Case No. 21–1167, D.C. Cir. (July 5, 2022). *See also* Securities Exchange Act Release No. 88827; File No. 4–757 (May 6, 2020), 85 FR 28702 (May 13, 2020) (Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data).

[343] *See* Notice, *supra* note 7, 88 FR at 17108.

[344] *See* CAT NMS Plan, *supra* note 2, at Sections 11.2 and 11.3.

[345] *See* Notice, *supra* note 7, 88 FR at 17108.

[346] *Id.*

[347] *See* FINRA April 2023 Letter at 6; SIFMA October 2022 Letter at 3. *See also* SIFMA May 2023 Letter at 6, n.11.

[348] FINRA April 2023 Letter at 7; FINRA June 2022 Letter at 6.

[349] FINRA April 2023 Letter at 4, 8. *See also* FINRA June 2022 Letter at 8.

[350] *See* SIFMA January 2023 Letter at 3, n.7.

[351] *See* FINRA April 2023 Letter at 6, n.16; SIFMA October 2022 Letter at 3. *See also* SIFMA May 2023 Letter at 6, n.11. One commenter stated that the Participants treat FINRA in ways that are financially beneficial to them without considering FINRA's role in the marketplace ''. . . as the not-for-profit self-regulator for the entire brokerage industry. . .'' SIFMA October 2022 Letter at 3. *See also* SIFMA January 2023 Letter at 4; SIFMA October 2022 Letter at 4; SIFMA May 2023 Letter at 8 (recommending that FINRA be treated differently from the Participant exchanges due to its unique role).

[352] *See* SIFMA October 2022 Letter at 3–4. *See also* SIFMA May 2023 Letter at 6, n.11.

[353] SIFMA October 2022 Letter at 3. *See also* SIFMA June 2023 Letter at 4 (quoting a Commission release stating that the Participants are potentially conflicted in allocating CAT fees to themselves and the Industry Members); *supra* note 64.

[354] SIFMA October 2022 Letter at 2. *See also infra* Section III.A.9.f. (suggesting changes to the governance structure of the CAT NMS Plan); *see also* MMI July Letter at 1–3. The latter commenter also felt that there should be a disclosure of the conflicts of interest the commenter believes are inherent in having the funding model determined by the Participants.).

[355] SIFMA October 2022 Letter at 2. The commenter also stated that the Industry Members are not voting members of the Operating Committee and have no way to direct the cost control efforts of the Participants or change their course if the cost control efforts prove to be unsuccessful. *See* SIFMA June 2022 Letter at 8.

[356] *See* FINRA April 2023 Letter at 5–7; SIFMA June 2022 Letter at 4; Citadel July Letter at 2, 16, 21, *supra* notes 73–74 and accompanying text. *See also* SIFMA October 2022 Letter at 2, 3.

[357] *See* FINRA April 2023 Letter at 5–6. *See also* FINRA June 2022 Letter at 7.

[358] *See* FINRA April 2023 Letter at 6.

[359] *Id.* at 6–7.

[360] SIFMA June 2022 Letter at 4. *See also* SIFMA October 2022 Letter at 3 (''. . . we believe the proposal is flawed because it fails to appropriately consider that Industry Members pay the full costs of operating FINRA.'').

[361] *See* SIFMA June 2022 Letter at 4.

therefore, Industry Members would additionally be indirectly assessed FINRA's one-third CAT fee for off-exchange transactions.[362] The commenter suggested an alternative allocation [363] that would subject FINRA only to a nominal regulatory user fee to access CAT Data.[364]

CAT LLC disagreed with the commenter's proposal to charge FINRA only a nominal regulatory fee.[365] CAT LLC stated that the proposed transaction-based CAT fee is purposely agnostic as to the location of where a trade occurs, and an intent of this design is to avoid influencing whether or where any trading activity would take place. Moreover, CAT LLC stated that FINRA is no different from the exchanges in terms of its regulatory obligations regarding the CAT.[366] CAT LLC also stated that FINRA's allocation is ''fair and reasonable as FINRA is currently, and is expected to continue to be, one of the largest regulatory users of the CAT, and it is responsible for the oversight of the very large over-the-counter securities market.'' [367]

FINRA requested that if the Commission were to approve the Proposed Amendment, that it acknowledge ''FINRA's need and ability to cover CAT costs that are not recovered through contractual arrangements through member fee increases, so as not to jeopardize FINRA's ability to carry out its critical regulatory mission.'' [368] FINRA also stated that it would file a rule change to increase its member fees with the filing of any proposed rule change to effectuate the Funding Model.[369]

The Commission acknowledges the comments objecting to the allocation to FINRA of 34% of the total CAT costs to be borne by Participants,[370] but believes that it is reasonable for the Proposed Amendment to assess fees to FINRA based on executed equivalent share volume like the other Participants for purposes of CAT funding. FINRA is a Participant of the CAT NMS Plan. All Participants are mandated under the CAT NMS Plan to fund the CAT.[371] The Executed Share Model would assess CAT fees based on executed equivalent share volume. Under the Executed Share Model, CAT fees would be allocated among the buyer, seller, and the market regulator in each transaction. FINRA would pay the Participant CAT fee based on off-exchange trades reported by its members to its trade reporting facilities because FINRA is the market regulator responsible for the market in which the TRF transactions occur. The Executed Share Model, like the current funding model, is designed to allocate CAT fees among the Participants based on market share. Since FINRA is generally the market regulator for the over-the-counter markets, its CAT fees, and thus market share, will be based on the trading activity in the over-the-counter markets reported to it by its members. The trading volume of the over-the-counter markets is greater than that on the exchanges; consequently, FINRA will likely be allocated a greater executed equivalent share volume than the other Participants. However, trading volume generates costs for CAT, therefore, given its role overseeing the over-the-counter market, it is reasonable for FINRA to incur a greater share of CAT fees based on the over-the-counter market's trading volume. As discussed above, it is difficult to calculate each CAT Reporter's individual cost burden on the CAT, and a reasonable proxy for CAT cost burden must be used. The proposed use of executed equivalent share volume is a reasonable method of allocating costs because it is readily determinable and equitable since executed share volume is based on trading activity, which impacts CAT costs. In practice, CAT Reporters will be assessed fees corresponding to the cost burden they impose on the CAT through their trading activity, or in FINRA's case, trading activity in the over-the-counter markets reported to it by its members.

The Commission recognizes that there could be other methodologies for allocating costs among CAT Reporters, such as allocations that take into account the manner in which each Participant earns revenue, but these other methodologies may be significantly more complex and would not necessarily more accurately reflect the cost burden of each CAT Reporter. CAT LLC chose to propose the use of executed equivalent share volume, explaining why trading activity is a reasonable proxy for cost burden and an appropriate metric for allocating CAT costs.[372] Although there may be multiple permissible approaches to cost allocation, the proposed allocation of Participant CAT fees based on executed equivalent share volume is reasonable and meets the Rule 608 approval standard.[373]

The Commission agrees with CAT LLC that the Executed Share Model reasonably assesses fees to FINRA in the same manner based on transaction volume as other Participants. The Executed Share Model is reasonably designed to be neutral as to the manner of execution and place of execution.[374] All Participants are self-regulatory organizations that have the same regulatory obligations under the Exchange Act, regardless of whether they operate as a for-profit or not-for-profit entity. Their regulatory responsibilities for the operations of CAT are the same.[375]

The Commission acknowledges the concerns expressed by commenters that FINRA's allocation could indirectly increase the allocation of CAT fees to Industry Members since Industry Members contribute to FINRA's funding.[376] As discussed above, however, the costs of CAT must be allocated between the Participants and Industry Members according to some formula. Although the Participants and Industry Members have different means of potentially recovering from others some of the costs allocated to them (*e.g.,* the Participants from Industry Members and Industry Members from customers), it is reasonable to allocate costs evenly among the three parties who have primary roles related to the transaction. The Commission agrees with CAT LLC that Industry Members may be able to offset any fees that FINRA assesses them by passing their CAT fees through to their customers, just as they may do with Section 31-related fees and other fees. The Commission recognizes, however, that not all Industry Members currently pass through fees or would determine to do so in the future.

Finally, the Commission does not agree that the Participants' treatment of FINRA is arbitrary because FINRA is treated as a market center for purposes

[362] *Id.* The commenter also stated that the proposed allocation would result in two-thirds of CAT costs for exchange transactions being imposed on Industry Members, and that this amount would be higher for off-exchange transactions as FINRA would be assessed one-third as the venue fee and Industry Members would be indirectly assessed FINRA's portion of CAT costs as they pay the entire costs of operating FINRA. *Id. See also* SIFMA October 2022 Letter at 2.

[363] *See supra* notes 100–101 and accompanying text.

[364] *See* SIFMA January 2023 Letter at 4. *See also* SIFMA May 2023 Letter at 8; SIFMA June 2022 Letter at 5; SIFMA October 2022 Letter at 4; *supra* notes 100–101 and accompanying text.

[365] *See* CAT LLC May 2023 Response Letter at 8.

[366] *Id.*

[367] *See* CAT LLC July 2023 Response Letter at 35.

[368] FINRA April 2023 Letter at 7.

[369] *Id.*

[370] *Id.* at 3; SIFMA May 2023 Letter at 2.

[371] *See* CAT NMS Plan, *supra* note 2, at Section 11.1(b); Section 11.3(a).

[372] *See* Notice, *supra* note 7, 88 FR at 17103.

[373] *See* 17 CFR 242.608(b)(2).

[374] *See* Notice, *supra* note 7, 88 FR at 17107.

[375] *Id.*

[376] *See* FINRA April 2023 Letter at 5–7; SIFMA June 2022 Letter at 4; Citadel July Letter at 2, 16, 21, *supra* notes 73–74 and accompanying text. *See also* SIFMA October 2022 Letter at 2, 3; FINRA June 2022 Letter at 4.

of determining its CAT funding obligations while the CT Plan, which governs the public dissemination of consolidated market data, would not have counted FINRA's market activity for purposes of determining the allocation of votes on the Operating Committee.[377] The different treatment of FINRA in these NMS plans reasonably reflects the very different roles that a market center is used for in these contexts. The CT Plan provisions discussed by the commenters involve the determination of which Participant(s) could be eligible for a second vote on the Operating Committee,[378] while the Executed Share Model proposes to assess FINRA a Participant CAT Fee based on its role as the regulator for the over-the-counter market in which such trades occur.[379] The commenter's request that the Commission issue an order soliciting comment on whether the Operating Committee should be reorganized consistent with the CT Plan [380] would be better addressed in the context of a separate plan amendment.

4. CAT Executing Broker

As noted above, CAT Executing Brokers will be charged CAT fees.[381] CAT LLC proposed to add a definition of ''CAT Executing Broker'' to Section 1.1 of the CAT NMS Plan. The definition would explain which party would be identified as a CAT Executing Broker in a transaction.

With respect to transactions on an exchange and over-the-counter transactions, CAT LLC would use transaction reports reported to the CAT by FINRA or the exchanges to identify the transaction, as well as the CAT Executing Broker for each transaction, for purposes of calculating the CAT fees.[382] Under the Participant Technical Specifications, for transactions occurring on a Participant exchange, there is a field for the exchange to report the market participant identifier (''MPID'') of ''the member firm that is responsible for the order on this side of the trade.'' [383] The Industry Members identified in these fields for the transaction reports would be the CAT Executing Brokers for transactions executed on an exchange.[384] FINRA is required to report to the CAT transactions in Eligible Securities reported to a FINRA trade reporting facility (*i.e.,* the TRF, Over-the Counter Reporting Facility (''ORF'') and Alternative Display Facility (''ADF'')).[385] Under the Participant Technical Specifications, for such transactions reported to a FINRA trade reporting facility, FINRA is required to report the MPID of the executing party as well as the MPID of the contra-side executing party.[386] The Industry Members identified in these two fields for the transaction reports would be the CAT Executing Brokers for over-the-counter transactions.[387]

For transactions on ATSs, if an ATS is identified as the executing party and/or the contra-side executing party in the TRF/ORF/ADF Transaction Data Event, then the ATS would be a CAT Executing Broker for purposes of the Executed Share Model.[388] If the ATS is identified as the executing party for the buyer in such transaction reports, then the ATS would be the CEBB.[389] If the ATS is identified as the executing party for the seller in such transaction reports, then the ATS would be the CEBS.[390] If the ATS is identified as both the executing party and contra-side executing party, the ATS would be both the CEBB and the CEBS.[391] ATSs would determine the executing party and the contra-side executing party reported to FINRA's equity trading facilities in accordance with the transaction reporting requirements for FINRA's equity trading facilities.[392]

For transactions that do not occur on an exchange and there is only a FINRA member identified for one side of the trade, that FINRA member would be treated as the CAT Executing Broker for both the buy-side and the sell-side of the transaction, that is, as the CEBS and CEBB.[393] Additionally, ''[f]or any trade report on which a Canadian non-member appears as a party to the trade, the FINRA member must appear as the reporting party.'' [394] In this situation, the executing broker identified in the ''reportingExecutingMpid'' field would be billed for both sides of the transaction.[395]

The Executed Share Model also provides for cancellations and corrections.[396] CAT LLC stated that it expects to determine CAT fees based on the transaction reports for a month as of a particular day.[397] To the extent that changes are made to the transaction reports on or before the day the CAT fees are determined for the given month, the changes will be reflected in the monthly bill.[398] To the extent that changes are made to the transaction reports after the day the CAT fees are determined for that month, subsequent bills will reflect any changes via debits or credits, as applicable.[399] CAT LLC represented that it will establish specific policies and procedures regarding the treatment of such adjustments as those related to cancellations and corrections, as is required under the CAT NMS Plan to adopt policies, procedures, and practices regarding the billing and collection of fees.[400] Furthermore, CAT LLC stated that it will inform Industry Members and other market participants

[377] The CT Plan provided that an exchange group or independent exchange that has more than 15 percent of consolidated equity market share during four of the six calendar months preceding a vote of the operating committee would be authorized to cast two votes. The CT Plan stated that FINRA is not considered a market center for purposes of determining consolidated equity market share solely by virtue of facilitating trades through any TRF that FINRA operates in affiliation with a national securities exchange designed to report transactions otherwise than on an exchange. *See supra* note 342.

[378] *See* FINRA April 2023 Letter at 6; SIFMA October 2022 Letter at 3. *See also* SIFMA January 2023 Letter at 4; SIFMA October 2022 Letter at 4; SIFMA May 2023 Letter at 8.

[379] *See supra* notes 371–372 and accompanying text.

[380] *See* SIFMA October 2022 Letter at 2.

[381] *See* Notice, *supra* note 7, 88 FR at 17087.

[382] *Id.* at 17088. The transaction reports used to identify transactions and CAT Executing Brokers do not provide for fractional quantities; therefore, CAT fees would not be calculated using fractional shares or fractional share components of executed orders. *Id.* at 17089. *See supra* notes 280–266 and accompanying text.

[383] Section 4.7 (Order Trade Event) and Section 5.2.5.1 (Simple Option Trade Event: Side Details) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0–r17 (Feb. 21, 2023), *https://www.catnmsplan.com/sites/default/files/2023-02/02.21.2023-CAT-Reporting-Technical-Specifications-for-Participants-4.1.0-r17.pdf.*

[384] *See* Notice, *supra* note 7, 88 FR at 17087–88.

[385] *See* Section 6.1 of the CAT Reporting Technical Specifications for Plan Participants (Feb. 21, 2023). A CAT Executing Broker in over-the-counter transactions identified on the TRF/ORF/ADF Transaction Data Event is determined based on the tape or media report, that is, a trade report that is submitted to a FINRA trade reporting facility and reported to and publicly disseminated by the appropriate exclusive Securities Information Processor. A CAT Executing Broker for over-the-counter transactions is *not* determined based on a non-tape report (*e.g.,* a regulatory report or a clearing report), which is not publicly disseminated. There is an exception to this statement for away-from-market trades. These are non-media trades reported to the TRF with an ''SRO Required Modifier Code'' of ''R''.

[386] *See* Notice, *supra* note 7, 88 FR at 17087–88.

[387] *Id.* at 17088.

[388] *Id.* at 17088–89.

[389] *Id.* at 17089.

[390] *Id.*

[391] *Id. See also* FINRA, Trade Reporting Frequently Asked Questions at Section 203, *available at https://www.finra.org/filing-reporting/market-transparency-reporting/trade-reporting-faq#203;* FINRA Regulatory Notice 09–08, *available at https://www.finra.org/rules-guidance/notices/09-08.*

[392] *See* Notice, *supra* note 7, 88 FR at 17089.

[393] *See* proposed Section 1.1. (definition of ''CAT Executing Broker'').

[394] Notice, *supra* note 7, 88 FR at 17089.

[395] *Id.*

[396] *Id.*

[397] *Id.*

[398] *Id.*

[399] *Id.*

[400] *See* CAT NMS Plan, *supra* note 2, at Section 11.1(d).

of these policies and procedures via FAQs, CAT Alerts and/or other appropriate methods.[401]

Certain commenters objected to the proposed definition of ''CAT Executing Broker.'' [402] One commenter stated that the term ''CAT Executing Broker'' ''does not appear to be universally defined or accepted by Option Industry Members or Participants'' and that such lack of acceptance ''present[s] a challenge when firms try to assess the impact the 'Funding Proposal' will have on their respective businesses.'' [403] Accordingly, the commenter advocated that the Executed Share Model follow the ''structure already in place for [collecting] Regulatory Fees,'' such as charging Clearing Brokers.[404]

Another commenter stated that the proposed definition of executing broker would result in the inequitable allocation of fees.[405] While the commenter supported the change from having clearing firms be assessed Industry Member CAT fees to executing brokers having this obligation,[406] because clearing firms would have been unfairly burdened with CAT costs and could have been placed in situations in which they would have been unable to identify the client responsible for the costs,[407] the commenter expressed concerns with how the Participants determined which entities would be considered executing brokers.[408] In comment letters on the prior funding model proposal,[409] which was amended to require executing brokers instead of clearing firms to be assessed CAT fees,[410] the commenter requested additional detail on how an executing broker would be defined.[411] The commenter subsequently stated that the definition in the current Proposed Amendment suffers from the same problems as the prior proposal in which CAT fees were allocated to clearing firms and would result in the inequitable allocation of CAT fees among Industry Members.[412]

The commenter explained that CAT operates on a cost-recovery basis, with costs resulting from the number of messages that Participants and Industry Members report to the CAT, the processing and linking of such messages, and the costs of providing tools to regulators to analyze CAT data.[413] The commenter stated that the use of message traffic as the basis of fees, in the Original Funding Model, would have ensured that all CAT Reporters would contribute to CAT's funding.[414] However, the commenter stated that, since the Proposed Amendment would not impose fees on all CAT Reporters, instead imposing fees on executing brokers, it would result in an inequitable allocation of fees as the executing brokers would be the last broker among many other brokers handling an order.[415] The commenter stated that any analysis of such a funding model must evaluate whether (i) the executing brokers would pass-through or absorb the CAT fees and any negative impacts on competition, noting that the Proposed Amendment would require executing brokers to incur expenses that other Industry Members would not incur since they would be required to collect the Industry Member portion of CAT fees on behalf of the Participants,[416] and (ii) Industry Members that executed trades for introducing brokers and acted as order consolidators and ATSs would be responsible for CAT fees for transactions they did not originate and would have to either pay the fee for their clients or develop software and processes to collect the fees from their clients as they often are not capable of passing through fees to the clients that sent them the orders.[417] The commenter stated that the Proposed Amendment would subject executing brokers to unfair burdens and require them to ''shoulder CAT costs in scenarios in which they could not determine which client firm was responsible for creating the CAT costs by initiating the transaction.'' [418]

The commenter suggested instead an allocation in which the Industry Member that originated an order would be treated as an ''executing broker'' and therefore be responsible for Industry Member CAT fees.[419] Under this alternative, ''the Industry Member who originates a new principal order or the Industry Member who initially receives and routes a customer order for execution on an agency basis would be directly assessed CAT Fees.'' [420] The commenter stated that this would be the most reasonable way to allocate CAT costs among Industry Members [421] and that it would be ''relatively easy to accommodate this approach.'' [422] One other commenter also suggested allocating costs to the party originating an order, stating that this would

[401] *See* Notice, *supra* note 7, 88 FR at 17089.

[402] *See* SIFMA May 2023 Letter; Letter from Timothy Miller, Chief Operating Officer, DASH Financial Technologies, LLC to Vanessa Countryman, Secretary, Commission (July 13, 2023) (''DASH July 2023 Letter''), at 1–2; Letter from Timothy Miller, Chief Operating Officer, DASH Financial Technologies, LLC to Vanessa Countryman, Secretary, Commission (April 11, 2023) (''DASH April 2023 Letter''), at 1–2. Both the DASH July 2023 Letter and the DASH April 2023 Letter incorporated by reference a separate letter submitted by the commenter on the prior funding proposal (stating that the concerns expressed in the prior letter concerning the operating and competitive burdens of the proposed funding model are unchanged). *See* Letter from Timothy Miller, Chief Operating Officer, DASH Financial Technologies LLC, to Vanessa Countryman, Secretary, Commission (Jan. 3, 2023) (''DASH January 2023 Letter'').

[403] DASH April 2023 Letter at 1. *See also* DASH July 2023 Letter at 1–2.

[404] DASH April 2023 Letter at 2. *See also* DASH July 2023 Letter at 1–2. The commenter reiterated that it believes clearing firms are still best suited to process the collection of fees, as this can occur at trade settlement and the cost is ultimately borne by the end beneficiary of each transaction. The commenter further stated that ''there is precedent to follow with other Regulatory Fees, such as ORF and OCC, to streamline the workflow and reduce the number of counterparties involved in the payment/collection process,'' and ''that in the options industry, ORF and Section 31 fees are not consistently billed to the exchange facing member; but, most of the time, these fees follow the clearing firm associated with the order.''

[405] *See* SIFMA May 2023 Letter at 3.

[406] *Id. See also* SIFMA January 2023 Letter at 7–8.

[407] *See* SIFMA May 2023 Letter at 3–4. *See also* SIFMA October 2022 Letter at 5. The commenter also expressed concerns about the assessment of CAT fees on clearing firms because clearing firms would be required to collect fees and thus would have to develop new systems and processes under the Executed Share Model, and because a clearing firm for a buyer or seller would not always be a party to a trade as it could be the clearer of a trade on behalf of an executing broker. *See* SIFMA June 2022 Letter at 9; SIFMA October 2022 Letter at 7.

[408] *See* SIFMA May 2023 Letter at 4.

[409] *See* Securities Exchange Act Release No. 94984 (May 25, 2022), 87 FR 33226 (June 1, 2022) (''Prior Funding Model Proposal'').

[410] Two partial amendments were submitted on the Prior Funding Model Proposal. The first partial amendment initially proposed the use of executing brokers. *See* Securities Exchange Act Release No. 96394 (Nov. 28, 2022), 87 FR 74183 (Dec. 3, 2022). The Prior Funding Model Proposal, as modified by the two partial amendments, was withdrawn by the Participants on March 1, 2023. *See* Securities Exchange Act Release No. 97212 (Mar. 28, 2023), 88 FR 19693 (Apr. 3, 2023).

[411] *See* SIFMA January 2023 Letter at 2, 8; SIFMA December 2022 Letter at 3. *See also* SIFMA May 2023 Letter at 4.

[412] *See* SIFMA May 2023 Letter at 4. *See also* SIFMA June 2022 Letter at 9–10; SIFMA October 2022 Letter at 5.

[413] *See* SIFMA May 2023 Letter at 4.

[414] *Id.*

[415] *Id.* at 4–5.

[416] *Id.* at 5. *See also* Virtu Letter at 5 (stating that it is ''highly likely'' that executing brokers would end up absorbing the fees themselves, as they would not have the systems in place to trace to whom the fees were properly allocable).

[417] *See* SIFMA May 2023 Letter at 5.

[418] *Id.* Another commenter similarly objected to the imposition of CAT fees on Executing Brokers. This commenter, a major wholesaler who also serves as the Executing Broker on many transactions, stated it was unjust to disproportionately burden Executing Brokers in this manner, and noted that the cost of designing processes and systems to route the fees to the appropriate parties could be prohibitive to smaller brokers. *See* Virtu Letter at 4–5.

[419] *See* SIFMA May 2023 Letter at 5.

[420] *Id.* at 6.

[421] *Id.* at 5.

[422] *Id.* at 6.

''streamline the process and more accurately allocate costs . . .'' [423]

One commenter expressed concerns about the imposition of CAT fees on CAT Executing Brokers.[424] The commenter stated that charging CAT Executing Brokers ''inordinately burdens Broker Dealers, especially small to medium-sized firms.'' [425] This commenter recommended using instead the existing structure for regulatory fees, including ''the efficiencies afforded by the current structure, and the resulting alleviation of risk.'' [426] In this regard, the commenter stated that ''Clearing Firms are best suited to process the collection of fees as it can occur at trade settlement and the cost is ultimately borne by the end beneficiary of each transaction.'' [427] The commenter also stated that small and medium-sized executing brokers could expect a significant negative impact on their net capital as a result of the proposal, stating, ''. . . the firms will be forced to recoup these costs by passing them on to their clients, either in the form of higher commission rates or as a separate transactional fee. Using [Clearing Member Trade Agreement] commission invoicing and/or SEC 31(b) fees in a broker-to-broker relationship as a proxy, these invoices are generally paid well after the 60-day milestone to qualify the receivable as 'good capital.' '' [428]

In response to the comment about the definition of CAT Executing Broker and the billing and collection process being better suited for clearing firms, CAT LLC stated that the proposed assessment of CAT fees on CAT Executing Brokers only addresses the party obligated to pay the CAT fee.[429] CAT LLC stated that a CAT Executing Broker would not be required to follow a particular process for paying CAT fees, as it could pay the fees itself, or require a clearing firm or other third party to pay CAT fees on its behalf.[430] For example, CAT LLC stated that a CAT Executing Broker can decide to enter into an arrangement with its clearing broker for the clearing broker to collect and pass-through the CAT fees like it does in other contexts.[431]

With respect to alternatives to the proposed definition of the CAT Executing Broker, CAT LLC stated that the ''originating broker'' suggestion was from a commenter who had previously recommended charging executing brokers in comment letters on the Prior Funding Model Proposal.[432] CAT LLC stated that the commenter's objection to charging executing brokers in the Executed Share Model was an attempt to further delay the approval of a funding model and the resultant payment of CAT fees by its members, rather than expressing a concern about the merits of charging executing brokers.[433]

In response, the commenter stated that the Operating Committee mischaracterized the commenter's position on the assessment of CAT fees to executing brokers by stating in the CAT LLC Response Letter that the commenter changed its position on this proposed change to delay adoption of a CAT funding model.[434] The commenter represented that it stated in comment letters it submitted on the Prior Funding Model Proposal [435] that initially proposed the use of executing brokers [436] that (1) the Participants did not define who would be an executing broker in a transaction, (2) a clear definition is necessary for Industry Members to understand when they would be assessed costs under the Executed Share Model, and (3) its understanding was that the concept of executing broker generally refers to the Industry Member that initiates an order.[437] The commenter stated that the Participants only provided a definition of executing broker in the Proposed Amendment.[438] The commenter stated that it provided concerns about the proposed definition in its May 2023 comment letter, which the commenter stated were mischaracterized by the Operating Committee in the CAT LLC Response Letter in an attempt to rush the Commission to a decision on the Proposed Amendment.[439]

In response to the comment that imposing fees on executing brokers would result in an inequitable allocation of fees and the suggestion that the use of message traffic as the basis of fees would have ensured that all CAT Reporters would contribute to CAT's funding, CAT LLC disagreed and stated that because the message traffic is separate from whether or not a transaction occurs, fees based on message traffic may not correlate with common revenue or fee models.[440] CAT LLC stated that, as a result, CAT fees based on message traffic could impose an outsized adverse financial impact on certain Industry Members, raising this same issue of an inequitable allocation of fees.[441] Further, in response to the commenter's criticism that in charging executing brokers, the fee would be charged to a subset of Industry Members and, as a result, that subset of Industry Members would incur expenses that other Industry Members would not incur, CAT LLC stated that it continues to believe that charging CAT Executing Brokers would satisfy the requirements of the Exchange Act.[442] CAT LLC stated that in the past, the Commission has approved fees that are charged to some, but not all, broker-dealers.[443] CAT LLC noted that, for example, FINRA's TAF is assessed to a subset of FINRA members—that is, it is assessed on the sell side of member transactions.[444] CAT LLC also stated that the options exchanges charge options regulatory fees per executed contract side, and, for both options and equities, Section 31-related fees are charged to the sell-side in a transaction.[445] CAT LLC recognized that, under the proposal to charge CAT Executing Brokers, the CAT Executing Broker, but not other Industry Members involved in a given order lifecycle, would be required to pay the CAT fees, and that Industry Members that sought to recoup such fees would have to develop processes to collect such fees from their clients.[446] CAT LLC stated that this regulatory requirement would have a similar effect as other types of regulatory fees, such as the FINRA TAF, the options regulatory fee and Section 31-related sales value pass-through fees because, ''[i]n each such case, a subset of broker-dealers is required to pay a transaction-based regulatory fee, and those broker-dealers seeking to recover such fees from other broker-dealers or non-broker-dealers have established processes with regard to the pass-through of such fees.'' [447]

CAT LLC further stated that it disagrees with charging an originating

[423] *See* Citadel July Letter at 20. *See also id.* at 3, 30, 31.

[424] *See* DASH April 2023 Letter. *See also* DASH July 2023 Letter at 1–2.

[425] *See* DASH April 2023 Letter at 1. *See also* DASH January 2023 Letter at 1; DASH July 2023 Letter at 1.

[426] DASH January 2023 Letter at 3. *See also* DASH April 2023 Letter at 1–2; DASH July 2023 Letter at 1–2.

[427] DASH April 2023 Letter at 1. *See also* DASH January 2023 Letter at 1; DASH July 2023 Letter at 1.

[428] DASH January 2023 Letter at 2; DASH July 2023 Letter at 1–2.

[429] *See* CAT LLC May 2023 Response Letter at 12; CAT LLC July 2023 Response Letter at 3.

[430] *See* CAT LLC July 2023 Response Letter at 3.

[431] CAT LLC May 2023 Response Letter at 12.

[432] *Id.* at 2. *See also supra* note 409.

[433] CAT LLC May 2023 Response Letter at 3.

[434] *See* SIFMA June 2023 Letter at 5.

[435] *See supra* note 409.

[436] *See supra* note 410.

[437] *See* SIFMA June 2023 Letter at 5.

[438] *Id.*

[439] *Id.* at 5–6.

[440] *See* CAT LLC May 2023 Response Letter at 4.

[441] *Id.*

[442] *Id.* at 3.

[443] *Id.*

[444] *Id.*

[445] *Id.*

[446] *See* CAT LLC May 2023 Response Letter at 4.

[447] *Id.*

broker instead of an executing broker because there are already several existing examples of transaction-based fees being assessed to executing brokers as opposed to the originating broker (*e.g.,* TAF, Section 31 fees, ORF fees), and it disagrees with the assertion that charging originating brokers would be easier.[448] CAT LLC stated that charging the originating Industry Member would be difficult to implement and would increase the costs of implementing CAT fees, whereas charging CAT Executing Brokers is simple, straightforward and in line with existing fee and business models because for any given trade (buy or sell), there is only one CAT Executing Broker to which shares can be allocated.[449] As such, CAT LLC stated that ''charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties.'' [450] CAT LLC stated that, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, ''to account[] for one or more layers of aggregation, disaggregation, and representation of the underlying orders.'' [451] Therefore, CAT LLC stated that one commenter's [452] ''suggestion of a model that begins the funding analysis with new order events (*e.g.,* MENO or MONO events) and then looks for any execution or fulfillment that is directly associated with that event does not reduce or mitigate the complexity associated with aggregation.'' [453] Further, CAT LLC stated that the commenter's recommendation would not work with the design of the CAT system, stating that ''[w]hile CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages.'' [454] CAT LLC also stated that charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, but charging CAT Executing Brokers would avoid such complications.[455] CAT LLC also stated that allocating to the originating broker would not include Industry Members that were only involved in routing and execution, which would include ''some of the largest Industry Members,'' [456] and that these Industry Members ''are not involved in the origination of orders or originate few orders in relation to their overall market activity.'' [457] Furthermore, CAT LLC stated that originating brokers would also need to establish processes for paying CAT fees, just as CAT Executing Brokers would.[458]

One commenter expressed uncertainty about CAT LLC's response that some of the largest Industry Members are not involved in order origination or originate few orders relative to their market activity, stating that it is unclear to whom the statement is referring since the executing broker and the originating broker would be the same firm in the case of proprietary trading activity.[459] Additionally, the commenter stated that the originating broker model should be pursued if it dramatically reduces market-wide implementation costs with a marginal increase in CAT costs, noting that Industry Members could bear most, if not all, CAT costs to implement the originating broker model.[460] The commenter stated that, before proceeding, the CAT Operating Committee must publish an analysis of the costs and benefits of the executing broker and originating broker models including any differences in CAT implementation costs and Industry Member implementation costs.[461]

In response to a comment stating that executing brokers lacked systems and processes to recover costs from their clients and would either choose to absorb the CAT fees or exit the business because of the investments necessary for the cost-recovery process,[462] CAT LLC stated that those Industry Members that pass-through CAT fees will accordingly need to develop processes to recover the fees from their clients, like they do for other regulatory-related fees, like the TAF, the options regulatory fee and Section 31-related fees.[463] CAT LLC also stated that CAT Executing Brokers would ''have full discretion as to whether and the manner and extent to which they pass on their CAT fees, if at all,'' noting that ''a CAT Executing Broker could round up its fees to the nearest cent, or decide to charge for, or not charge for certain transactions, or assess a specific fee or incorporate the costs into other fee programs.'' [464] CAT LLC stated that assessing a transaction-based fee to an executing broker and the executing broker deciding whether and how to pass-through its costs to clients is ''not new or novel.'' [465] Finally, CAT LLC noted that the Plan Processor would provide trade-by-trade data to CAT Executing Brokers, and will offer a training program for CAT Executing Brokers to help them understand their CAT bills.[466]

In the Commission's view, CAT LLC's definition of ''CAT Executing Broker'' is reasonable given that the Executed Share Model is based upon the calculation of *executed* equivalent shares (emphasis added),[467] and the executing brokers are reasonably suited to know their own volume and plan for future volume of executed equivalent shares to pay the CAT fees. One commenter's suggested approach would also result in the assessment of fees on a subset of Industry Members —originating brokers—and thus could raise similar allocation concerns as those raised by the commenter about the proposed approach.[468] In addition, as discussed below, the Commission agrees with the Participants that the ease of administration in using the transaction reports to identify the executing broker is an advantage of the Proposed Amendment. Given the similar issues with either approach—either charging the fees to a subset of Industry Members based on whether they are the ''CAT Executing Broker'' or the originating broker—it is reasonable to choose the less administratively burdensome of the two options. Accordingly, the assessment of CAT fees on CAT Executing Brokers is reasonable.[469]

In response to the commenter that questioned CAT LLC's response that some of the largest Industry Members are not involved in order origination or originate few orders relative to their market activity,[470] the Commission is not relying on this statement by CAT LLC and understands that the executing broker and the originating broker would be the same in the case of proprietary

[448] *Id.* at 5. *See also* CAT LLC July 2023 Response Letter at 3–4, 4 (detailing challenges of allocating CAT costs to originating brokers).

[449] *See* CAT LLC May 2023 Response Letter at 5. *See also* CAT LLC July 2023 Response Letter at 3.

[450] CAT LLC May 2023 Response Letter at 5. *See also* CAT LLC July 2023 Response Letter at 4.

[451] CAT LLC May 2023 Response Letter at 5. *See also* CAT LLC July 2023 Response Letter at 3.

[452] *See* SIFMA May 2023 Letter at 5.

[453] *See* CAT LLC May 2023 Response Letter at 5.

[454] *Id.*

[455] *Id.*

[456] *See* CAT LLC July 2023 Response Letter at 3.

[457] *Id.*

[458] *Id.*

[459] *See* Citadel August Letter at 6.

[460] *Id.*

[461] *Id.*

[462] *See* Virtu Letter at 5.

[463] *See* CAT LLC July 2023 Response Letter at 9. *See also id.* at 5.

[464] CAT LLC July 2023 Response Letter at 10. *See also id.* at 5 (adding that broker-dealers pass-through fees to customers related to Section 31 fees).

[465] *Id.*

[466] *Id.* at 10. *See also id.* at 5.

[467] *See* Notice, *supra* note 7, 88 FR at 17086.

[468] *See* SIFMA May 2023 Letter at 5, 6.

[469] *See* 17 CFR 242.608(b)(2).

[470] *See* Citadel August Letter at 6.

trading activity. Although one commenter suggested that the originating broker model should be pursued if it dramatically reduces market-wide implementation costs with a marginal increase in CAT costs,[471] the Commission believes that the executing broker model is reasonable. The Commission understands the argument that charging originating brokers instead of executing brokers would be easier and more cost effective for the executing brokers, but it would be at the expense of the originating brokers. The Commission also understands that charging executing brokers instead of originating brokers is easier and more cost effective for the CAT Plan Processor. Using CAT Data, the CAT Plan Processor can more easily determine which executing broker to charge. On the other hand, if the CAT Plan Processor were to charge originating brokers, the Commission believes the CAT Plan Processor would have to rely on linkages, which may not be one-for-one in all circumstances, to determine which originating broker to charge for an execution. And this difficulty not only would add to the costs of the CAT but also would impact transparency and potentially the relative simplicity of the CAT Fees. Moreover, the Proposed Amendment does not address how executing brokers pass-through CAT fees to their customers.

Using transaction reports to identify the transaction for purposes of calculating the CAT fees as well as the CAT Executing Broker for each transaction for purposes of calculating the CAT fees is a straightforward and more objective method of identifying executing brokers than other methods, such as identifying an originating broker through an evaluation of CAT linkages. Although the definition of ''CAT Executing Broker'' may not be used by the industry or universally accepted, CAT Executing Brokers will be able review their transactions reports and request details regarding the calculation of their fees, which should allow them to better assess the impact of the Executed Share Model on their business models.[472] It is appropriate for CAT LLC to establish policies and procedures on the treatment of adjustments related to cancellations and corrections. CAT LLC stated that to the extent changes are made to the transaction reports on or before the day the CAT fees are determined for the given month, the changes will be reflected in the monthly bill.[473] To the extent that changes are made to the transaction reports after the day the CAT fees are determined for that month, subsequent bills will reflect any changes via debits or credits, as applicable.[474] It is appropriate to adjust an Industry Member's or Participant's CAT fees for cancellations and corrections when such adjustments are made to the transaction reports that are used for calculate CAT fees for that month. Additionally, under Section 11.1(d) of the CAT NMS Plan, the Operating Committee is required to adopt policies and procedures regarding the billing and collection of fees.[475]

It is the Commission's view that charging CEBBs and CEBSs is reasonable. The Executed Share Model recognizes that there are three parties who play significant roles in transactions reportable to the CAT: the Participant, the buy-side and the sell-side.[476] The Proposed Amendment also is based on *executed* equivalent shares (emphasis added).[477] As such, CAT LLC stated that charging the CEBBs and CEBSs would reflect the executing role the CEBB and CEBS have in each transaction.[478] Additionally, charging CEBBs and CEBSs is in line with the use of transaction reports from the exchanges and FINRA's equity trading reporting facilities for calculating the CAT fees.[479] Specifically, these transaction reports identify CEBBs and CEBSs, so charging such entities potentially streamlines the fee charging process.[480] CAT LLC also explained that charging both the buy-side and the sell-side of a transaction would be consistent with other fees, such as the options regulation fee.[481]

In Rule 613, the Commission made the determination that the costs of the CAT should be shared by the Participants and Industry Members. Charging CAT Executing Brokers, clearing firms or ''originating brokers'' all would impose the costs initially on a subset of Industry Members. As discussed above, given that the charges are based on executed equivalent shares, it makes sense to use the CAT Executing Brokers as the immediate recipients of the charge. Accordingly, the Commission agrees with CAT LLC that it is reasonable to impose the charge on CAT Executing Brokers. The Commission acknowledges that charging CEBBs and CEBSs would impose a burden on such firms, which could potentially have an effect on their net capital. However, currently, such firms regularly pay transaction-based fees to the Participants, which they may pass-through to their customers who, in turn, could pass their CAT fees to their customers, until the fee is imposed on the ultimate participant in the transaction.[482] Additionally, unlike clearing firms that may simply clear a trade on behalf of the executing broker, executing brokers are always parties to a transaction, including instances that may result in CAT costs but not in actual trades, such as unexecuted orders. The Commission therefore agrees with CAT LLC that assessing Industry Members CAT fees on CEBBs and CEBSs would be reasonable for their ''executing role'' in each transaction.[483]

5. Prospective CAT Fees

a. Fee Rate Formula

Under the Executed Share Model, Participants, CEBSs and CEBBs would be subject to fees designed to cover the ongoing budgeted costs of the CAT, as determined by the Operating Committee.[484] Each Participant and CAT Executing Broker would be required to pay a CAT Fee related to Prospective CAT Costs for each transaction in Eligible Securities in the prior month based on CAT Data.[485] CAT Fees would be calculated by multiplying the executed equivalent shares in the transaction by one-third and the applicable ''Fee Rate.''[486] The Commission received no comments on the Fee Rate Formula.

At the beginning of each year, the Operating Committee would set the Fee Rate to be used to determine CAT Fees.[487] To calculate the Fee Rate for Prospective CAT Costs, the Operating Committee would divide the reasonably budgeted CAT costs by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for that year.[488] The Operating Committee would base the projected total executed equivalent

[471] *Id.*

[472] *See* proposed Section 11.3(a)(iv)(A) and 11.3(b)(iv)(A). *See also infra* Section III.A.7. (Calculation Information; Billing and Collection of CAT Fees).

[473] *See* Notice, *supra* note 7, 88 FR at 17089.

[474] *Id.*

[475] *See* CAT NMS Plan, *supra* note 2, at Section 11.1(d).

[476] *See* Notice, *supra* note 7, 88 FR at 17104.

[477] *Id.* at 17086.

[478] *Id.* at 17103.

[479] *Id.*

[480] *Id.*

[481] *Id.* at 17108.

[482] *See* Notice, *supra* note 7, 88 FR at 17103.

[483] *Id.*

[484] *See* proposed Section 11.3(a)(i)(A)(I) and (II); proposed Section 11.3(a)(iii)(A).

[485] *See* proposed Section 11.3(a)(ii)(A) and (iii)(A).

[486] *Id.*

[487] *See* proposed Section 11.3(a)(i)(A)(I). The Fee Rate would be established through a majority vote of the Operating Committee. *See* Notice, *supra* note 7, 88 FR at 17108.

[488] *See* proposed Section 11.3(a)(i)(A)(I).

share volume on the total executed equivalent share volume of transactions in Eligible Securities from the prior twelve months.[489] Additionally, CAT LLC would permit the Operating Committee to use its discretion to analyze likely volume for the upcoming year[490] and Participants would be required to describe the calculation of the projection in their fee filings submitted to the Commission pursuant to Section 19(b) to implement the CAT Fee for Industry Members.[491] The Operating Committee also would be required to perform a mid-year adjustment of the Fee Rate for CAT Fees related to Prospective CAT Costs.[492]

CAT LLC proposed Section 11.3(a)(i)(A)(I) of the CAT NMS Plan to describe the annual calculation of the Fee Rate and the requirement for Participants to file a fee filing for CAT Fees to be charged to Industry Members calculated using the Fee Rate. Under the Executed Share Model, the Operating Committee will calculate the Fee Rate by dividing the reasonably budgeted CAT costs for the year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the year.[493] Should the budgeted costs be higher than actual costs, any budget surplus will be credited against the fees for the following year, as CAT LLC cannot hold higher than a 25% reserve.[494]

Once the Operating Committee has approved such Fee Rate, the Participants shall be required to file with the Commission, pursuant to Section 19(b) of the Exchange Act,[495] CAT Fees to be charged to Industry Members calculated using such Fee Rate.[496] Participants and Industry Members will be required to pay CAT Fees calculated using this Fee Rate once such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.[497]

Proposed Section 11.3(a)(i)(A)(II) of the CAT NMS Plan describes the mandatory mid-year calculation of the Fee Rate and the requirement for Participants to file a fee filing for CAT Fees to be charged Industry Members calculated using the Fee Rate. Under the Executed Share Model, the Operating Committee will adjust the Fee Rate once mid-year[498] by dividing the reasonably budgeted CAT costs for the remainder of the year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the remainder of the year.[499] Once the Operating Committee has approved the new Fee Rate, the Participants shall be required to file with the Commission, pursuant to Section 19(b) of the Exchange Act, CAT Fees to be charged to Industry Members calculated using the new Fee Rate.[500] Participants and Industry Members will be required to pay CAT Fees calculated using this new Fee Rate once such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.[501]

CAT LLC proposed to add Section 11.3(a)(i)(A)(III) to the CAT NMS Plan to state that CAT Fees related to Prospective CAT Costs do not sunset automatically; such CAT Fees would remain in place until new CAT Fees are in place with a new Fee Rate.[502]

CAT LLC proposed to add Section 11.3(a)(i)(A)(IV) to the CAT NMS Plan to provide that the first CAT Fee may commence at the beginning of the year or during the year. If it were to commence during the year, the CAT Fee would be calculated as if it were a mid-year calculation.[503]

The proposed recovery of Prospective CAT Costs is appropriate. It is appropriate to require that each Participant, CEBB and CEBS pay a CAT Fee related to Prospective CAT Costs for each transaction in the prior month based on CAT Data.[504] Basing the CAT Fee on transaction data from the prior month is appropriate as it is recent in time and therefore more reflective of current market data, and the Commission did not receive any comments on this issue.

The manner in which the Fee Rate for Prospective CAT Costs will be calculated (*i.e.,* by dividing the CAT costs reasonably budgeted for the upcoming year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the year) is reasonable.[505] The use of projected executed equivalent share volume in determining the Fee Rate is appropriate because it would provide the likely volume for the year to be used as the denominator. It is reasonable to use the prior twelve months to determine the projected total executed equivalent share volume of all transactions in Eligible Securities for the year[506] because it would be the most recent data available to use to make a projection needed to calculate the Fee Rate, and the most recent data is on balance more likely to resemble the near future. Additionally, as noted above, that the Commission agrees with CAT LLC's analysis that ''trading activity provides a reasonable proxy for cost burden on the CAT, and therefore is an appropriate metric for allocating CAT costs among CAT Reporters.'' [507] Further, requiring that the CAT costs be ''reasonably budgeted'' and projected total executed equivalent share volume be ''reasonably projected'' is designed to help impose some discipline or constraints in the fee setting process. It is reasonable for CAT LLC to permit the Operating Committee to project the upcoming volume for the upcoming year.[508] It is not possible to know exactly what the volume will be before the year begins, so a projection will be necessary. If the volume turns out to be higher than projected, then CAT LLC will be able to use its reserve to cover any shortage. If it is lower, resulting in a budget surplus, the CAT fees for the following year would be lower.[509] Furthermore, since the Participants would be required to describe the calculation of the projected total executed equivalent share volume in the fee filings submitted to the Commission, pursuant to Section 19(b) of the Exchange Act, to implement CAT Fees for Industry Members, the public will have an opportunity to review the projection and provide comment.[510]

[489] *See* proposed Section 11.3(a)(i)(D).

[490] *See* Notice, *supra* note 7, 88 FR at 17094.

[491] *See* proposed Section 11.3(a)(iii)(B); 15 U.S.C. 78s(b).

[492] *See* proposed Section 11.3(a)(i)(A)(II).

[493] *See* proposed Section 11.3(a)(i)(A)(I).

[494] *See infra* Section III.A.5.c (Reserves).

[495] 15 U.S.C. 78s(b).

[496] *See* proposed Section 11.3(a)(i)(A)(I).

[497] *Id.*

[498] *See* proposed Section 11.3(a)(i)(A)(II).

[499] *Id.*

[500] *Id.*

[501] *Id.*

[502] *See* proposed Section 11.3(a)(i)(A)(III).

[503] *See* proposed Section 11.3(a)(i)(A)(IV).

[504] *See* proposed Section 11.3(a)(ii)(A) and (iii)(A).

[505] *See* proposed Section 11.3(a)(i)(A)(I).

[506] *See* proposed Section 11.3(a)(i)(D).

[507] *See* Notice, *supra* note 7, 88 FR at 17103.

[508] *Id.* at 17094.

[509] *See infra* Section III.A.5.c (Reserves).

[510] *See* proposed Section 11.3(a)(iii)(B).

The annual and mid-year adjustments of the Fee Rate for Prospective CAT Costs [511] are appropriate because they would ensure that CAT Fees related to Prospective CAT Costs would stay aligned with changes to the budget and projected volume occurring as the year progresses with contemporaneous data. Additionally, calculating a CAT Fee that starts mid-year as if it were a mid-year Fee Rate calculation is appropriate because calculating it that way would base the CAT Fee on the budgeted CAT costs and projected total executed equivalent share volume of all transactions in Eligible Securities for the remainder of the year, rather than for the entire year. This is an appropriate treatment of a CAT Fee that would commence mid-year, not at the beginning of the year.

b. Budgeted CAT Costs

The calculation of the Fee Rate for CAT Fees related to Prospective CAT Costs requires the determination of the Budgeted CAT Costs for the year or other relevant period.[512] Proposed Section 11.3(a)(i)(C) of the CAT NMS Plan provides that the budgeted CAT costs for the year shall be comprised of all reasonable fees, costs and expenses reasonably budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating Committee.[513]

Section 11.1(a) of the CAT NMS Plan describes the requirement for the Operating Committee to approve an operating budget for CAT LLC on an annual basis. It requires the budget to ''include the projected costs of the Company, including the costs of developing and operating the CAT for the upcoming year, and the sources of all revenues to cover such costs, as well as the funding of any reserve that the Operating Committee reasonably deems appropriate for prudent operation of the Company.'' [514] CAT LLC proposed to amend Section 11.1(a) to require the Operating Committee to approve a *reasonable* operating budget for CAT LLC on an annual basis.[515]

CAT LLC also proposed to amend Section 11.1(b) of the CAT NMS Plan to add a reference to Section 11.1. Currently, Section 11.1(b) states that ''[s]ubject to Section 11.2, the Operating Committee shall have the discretion to establish funding for the Company'' including establishing fees to be paid by the Participants and Industry Members (that shall be implemented by the Participants) . . .'' [516] CAT LLC proposed to add a reference to Section 11.1 so that ''[s]ubject to Section 11.1 and Section 11.2'' the Operating Committee would have the discretion to establish funding for the Company.[517] CAT LLC explained that this proposed change is relevant because Section 11.1 relates to the budget and the budget is used to calculate fees.[518]

CAT LLC also proposed to add subparagraph (i) to Section 11.1(a) of the CAT NMS Plan to list the types of CAT costs to be included in the budget. Specifically, CAT LLC proposed to state that ''[w]ithout limiting the foregoing, the reasonably budgeted CAT costs shall include technology (including cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs), legal, consulting, insurance, professional and administration, and public relations costs, a reserve, and such other categories as reasonably determined by the Operating Committee to be included in the budget.'' [519]

Certain commenters noted a lack of detail provided on the cost categories.[520] One commenter stated that the budget line item categories are too high level.[521] The commenter urged the inclusion of much greater detail and specificity on the budget spending choices, especially in technology,[522] to allow Industry Members and the public to understand and evaluate CAT spending decisions.[523] Similarly, other commenters requested more transparency into the drivers of CAT costs, in particular, technology costs, which they stated is the largest expense item.[524] One commenter stated that their ''concerns are exacerbated by the general lack of transparency coming from the CAT Operating Committee. Despite continued requests for information about key drivers of the rapidly growing CAT costs, the CAT Operating Committee points to high-level financial and operating budgets published by the Committee that merely provide broad categories of costs and expenses. Likewise, in the current structure, the SEC staff also have no incentive to control costs . . . This process does not afford industry members with appropriate notice of, and opportunity to comment on, material changes to the CAT. Nor does it adhere to the requirements under the Exchange Act to weigh the costs and benefits of proposed changes to the NMS plan.'' [525] Another commenter stated that the Operating Committee refuses to provide cost transparency, such as more details on the broad expense categories provided in the operating expenses (as well as the Historical CAT Costs) provided in the Proposed Amendment.[526] The

[511] *See* proposed Section 11.3(a)(i)(A)(I) and (II).

[512] *See* proposed Section 11.3(a)(i)(A)(I).

[513] CAT LLC proposed to use budgeted CAT costs in calculating CAT Fees rather than costs incurred. CAT LLC explained that using budgeted CAT costs is necessary to build financial stability to support the Company as a going concern, in accordance with the funding principle in Section 11.2(f) of the CAT NMS Plan, because it would allow CAT LLC to collect fees before bills become payable. CAT LLC stated that if CAT Fees were only collected after bills become payable, Participants would have to continue to fund the CAT for all CAT costs to pay bills as they are due. *See* Notice, *supra* note 7, 88 FR at 17114.

[514] *See* CAT NMS Plan, *supra* note 2, at Section 11.1(a).

[515] *See* proposed Section 11.1(a).

[516] *See* CAT NMS Plan, *supra* note 2, at Section 11.1(b).

[517] *See* Notice, *supra* note 6, 88 FR at 17090.

[518] *Id.*

[519] *Id.* CAT LLC has stated that it will consider providing additional detailed subcategories regarding technology costs, but notes that what it is currently providing is consistent with what is made publicly available on its website. CAT LLC has stated that it will consider the need to provide additional detailed subcategories for any area besides technology, both because technology costs account for the majority of the budget and because it is not considered ''best practices'' to disclose detailed legal or insurance information, as these are particularly sensitive. *Id.* Detailed information is always available to the Commission for review upon request. *Id.*

[520] *See* SIFMA January 2023 Letter at 6; Citadel July Letter at 13–14; FIA Letter at 2–5; Letter to Vanessa Countryman, Secretary, Commission, from Joseph Corcoran, Managing Director, Associate General Counsel and Ellen Greene, Managing Director, Equities and Options Market Structure, SIFMA, and Howard Meyerson, Managing Director, Financial Information Forum, dated July 31, 2023 (''FIF and SIFMA Letter''), at 8.

[521] *See* SIFMA January 2023 Letter at 6.

[522] *Id.* (stating that CAT spending on technology should be broken into further refined cost breakdowns of the following categories: cloud hosting services, operating fees, CAIS operating fees and change request fees). The proposed breakdown is consistent with what is currently provided to the public. *See* Notice, *supra* note 6, 88 FR at 17090. *See also* FIF and SIFMA Letter at 8.

[523] *See* SIFMA January 2023 Letter at 6.

[524] *See* FIF and SIFMA Letter at 8. The commenter stated that the 2023 budget divides technology costs, estimated to be $222.5 million and 95.3% of total operating costs, into four categories with cloud hosting services represents 75.5% of estimated CAT costs for 2023. *Id.* The commenter requested the Commission and the Participants to make publicly available the financial terms of the contract between the Participants and Amazon Web Services (''AWS''), the cloud hosting services provider, and publish all invoices from AWS. *Id.* The Commission declines to mandate the publication of a contract between private parties. Similarly, the Commission declines to mandate the publication of AWS invoices. The Participants can choose to publish this information if they believe it is appropriate.

[525] *See* FIA Letter at 2–5.

[526] *See* Citadel July Letter at 13–14. *See also id.* at 23.

commenter believes that the lack of transparency into costs would prevent the Commission from finding that the proposed allocation methodology is reasonable [527] and would raise concerns that inappropriate expenses would be allocated to Industry Members, like litigation expenses incurred by the Operating Committee against the Commission, and expenses prohibited by the Financial Accountability Amendments from being recovered by the Operating Committee.[528] The commenter also stated that the Proposed Amendment lacks sufficient detail for the Commission to perform the required economic analysis.[529]

The commenter suggested enhancements to improve budget transparency.[530] The commenter suggested that all CAT operating budgets should remain published on the CAT website [531] and that any material change to the CAT system, related technology contracts or implementation scope should require the filing of an NMS plan amendment explaining the necessity of the change and include a robust cost-benefit analysis.[532]

In addition, the commenter suggested that exchanges be responsible for costs that exceed the budget in order to incentivize cost control,[533] and that Industry Members should not be allocated costs for matters specifically for the benefit of the Operating Committee or the Commission (such as costs related to litigation ''or filings that are inconsistent with the Exchange Act'' [534]), stating that ''Industry Members should also not be allocated costs relating to how data is presented to, and used by, regulatory Staff at the SROs or the Commission.'' [535] Furthermore, the commenter suggested that change requests that do not involve specific NMS Plan requirements should be allocated to the requestor, including the Commission.[536]

Commenters also discussed a need for a cost review mechanism,[537] with several commenters citing to high operating costs as evidence for the need of one.[538] One commenter stated that CAT costs are increasing at an unsustainable level and need to be controlled.[539] The commenter stated that the Commission lacks a process to manage CAT costs as CAT operating costs are not part of the Commission's budget and do not require an appropriation.[540] The commenter urged that there is a need to allow the public, the Commission and industry to have a better understanding of the drivers of CAT operating costs,[541] why they have exceeded the operating costs estimated in the CAT NMS Plan,[542] and why they are projected to increase 27% from 2022 to 2023.[543] The commenter requested that the Commission direct the Participants to analyze the increase in CAT operating costs and to evaluate future expected annual CAT operating cost increases,[544] and also advised the Commission not to mandate any new processing or reporting requirements until such analysis has concluded.[545]

One commenter stated that asset managers were concerned about the lack of an independent cost review mechanism for the CAT budget to ensure that future fees are fair and reasonable and spending will be appropriate and cost-effective.[546] Similarly, another commenter stated that an independent cost review mechanism is necessary to ensure future CAT fees are fair and reasonable and to safeguard against unchecked spending.[547] The commenter urged the inclusion of a mechanism to allow the public to review the annual CAT budget before it is finalized, since, as proposed, the public would only have the opportunity to review the CAT budget when the Participants submit proposed rule changes, pursuant to Section 19(b) of the Exchange Act,[548] to implement CAT fees on Industry Members.[549] The commenter also stated that it is unlikely that the Commission would decide that a proposed CAT fee does not meet Exchange Act fee standards and require the Participants to modify the CAT budget because it would be a lengthy, time-consuming process and due to ''the regulatory value of CAT data and the CAT system to the Commission.'' [550] The commenter stated that the Commission is ''directly conflicted in its role as the user and beneficiary of the CAT system for regulatory functions and its role as the reviewer of the CAT budget and fee filings, a conflict that is only heightened due to a lack of a Commission funding obligation for CAT.'' [551] The commenter also requested that ''the Participants' proposed budget include as a separate line-item projected usage costs and system change costs related to the Commission's use and design of the CAT system.'' [552] Similarly, another commenter suggested that an independent expert committee assess whether cost levels and third party arrangements are reasonable, and whether more cost-control measures are warranted,[553] and that the Commission formally approve the CAT budget on an annual basis.[554] The commenter further stated that the Proposed Amendment made no attempt to specify the key drivers of costs, such as explaining the requirements that resulted in significant cost increases, or the design alternatives the Operating Committee previously considered.[555] The commenter added that Industry Members must fund a 25% reserve above budgeted amounts, and ad-hoc discussions between the Operating Committee and the

[527] *Id.* at 2, 15, 26.

[528] *Id.* at 2.

[529] *Id.* at 11. Rule 613(a)(5) of Regulation NMS requires the Commission to conduct an assessment of the Proposed Amendment's impact on efficiency, competition and capital formation, which is not the same economic analysis as the Commission conducts when engaged in a rulemaking. 17 CFR 242.613(a)(5). The Proposed Amendment contains the information needed for the Commission to conduct this assessment. *See infra* Section IV. *See also infra* note 1044.

[530] *See* Citadel July Letter at 33–35.

[531] *Id.* at 3, 34.

[532] *Id. See also* FIF and SIFMA Letter at 13.

[533] *See* Citadel July Letter at 3, 32.

[534] *Id.* at 32.

[535] *Id.*

[536] *Id.*

[537] *See* SIFMA May 2023 Letter at 3, 8–10; Citadel July Letter at 8, 26, 27; FIF and SIFMA Letter at 8–9; SIFMA AMG Letter at 3. *See also* SIFMA October 2022 Letter at 5–6; SIFMA January 2023 Letter at 2, 5–6; SIFMA June 2023 Letter at 2, n.10, 4; Virtu Letter at 4; MMI July Letter at 3–4; FIA Letter at 3, 5.

[538] *See, e.g.,* MMI July Letter at 3; Virtu Letter at 4, FIF and SIFMA Letter at 2, 5–9; SIFMA AMG Letter at 3.

[539] FIF and SIFMA Letter at 2, 5. The commenter stated that internal costs and costs associated with trading workflow changes to comply with certain CAT reporting requirements should also be considered, arguing that these costs would significantly exceed CAT operating costs are 100% paid for by broker-dealers and exchanges. *Id.* at 2, 5, 6.

[540] *Id.* at 8.

[541] *Id.*

[542] *Id.* at 7, 9.

[543] *Id.* at 9.

[544] FIF and SIFMA Letter at 4.

[545] *Id.*

[546] *See* SIFMA AMG Letter at 3.

[547] *See* SIFMA May 2023 Letter at 3, 8–10. *See also* SIFMA October 2022 Letter at 5–6; SIFMA January 2023 Letter at 2, 5–6; SIFMA June 2023 Letter at 2, n.10, 4; Citadel July Letter at 2, 26 (stating that that ''the trajectory of annual operating expenses is unconstrained,'' and that the ''magnitude and trajectory'' of the costs are not reasonable since Industry Members have borne nearly all CAT-related costs''); Citadel August Letter at 7.

[548] 15 U.S.C. 78s(b).

[549] *See* SIFMA May 2023 Letter at 8–9. *See also* SIFMA June 2022 Letter at 8–9; SIFMA October 2022 Letter at 6; SIFMA January 2023 Letter at 5, 6.

[550] SIFMA May 2023 Letter at 9.

[551] *Id.* at 9–10.

[552] *Id. See also* SIFMA January 2023 Letter at 6.

[553] *See* Citadel July Letter at 3, 33.

[554] *Id.*

[555] *Id.* at 14.

Commission could result in higher costs.[556]

The commenter also suggested enhancements to reduce overall CAT operating costs.[557] Specifically, the commenter suggested that the Operating Committee and the Commission stop making changes to the CAT to stabilize operating costs, stating that there are changes slated for development that are currently subject to exemptive relief, and other requirements the commenter believes are outside the scope of the CAT NMS Plan that would result in costs that outweigh benefits.[558] The commenter suggested that the Operating Committee file an updated NMS plan to reflect the status quo,[559] and work with the Commission and industry to identify technical requirements that could be modified to reduce costs without sacrificing the key benefits of the CAT system, like moving timelines from T+1 to T+2.[560] The commenter also suggested that steps should be taken to streamline the CAT submission process to minimize reporting errors and to reduce industry implementation costs, like implementing further data validation.[561] One commenter stated that if the Participants ''determine to charge their members fees to fund their share of CAT fees,'' then Industry Members would bear 100% of CAT costs, and thus,''[w]ith little to no skin-in-the-game, the Participants will not be incentivized to control costs.'' [562] The commenter further stated that they join other commenters in calling for an ''independent cost review mechanism.'' [563]

In response to the comment that suggested that all CAT operating budgets should remain published on the CAT website,[564] CAT LLC stated that it publishes its annual financial statements from 2017-on and voluntarily publishes its annual operating budget and updates to the budget occurring during the year.[565] CAT LLC stated that, in response to the comment, it intends that prior CAT operating budgets will stay available on the CAT website.[566]

In response to a commenter suggesting that the exchanges be responsible for any costs that exceeded the approved budget,[567] CAT LLC stated that this suggestion would not result in a fair and equitable allocation consistent with the Exchange Act because Industry Member trading activity ''contributes significantly'' [568] to CAT costs and it would not be fair for Participants to bear CAT costs exceeding the budget if unexpected increases in trading volume resulted in the increased CAT costs.[569] CAT LLC also stated that this suggestion could incentivize the Participants to base the budget on ''the most conservative projections for future Industry Member data volume'' [570] to not be responsible for costs that go over the budget.[571] In addition, CAT LLC noted that the Proposed Amendment would include both a requirement to adjust the Fee Rate during the year to address any changes in projected or actual transaction volume or budgeted or actual CAT costs, and an operational reserve to address shortfalls in collected fees versus actual CAT costs.[572]

In response to suggestions to use an independent cost review mechanism,[573] CAT LLC stated that such a review process is unnecessary because it would go beyond what is required by either Rule 613 or the CAT NMS Plan, and would be superfluous since any CAT fees must, prior to being implemented, undergo the review process detailed in Rule 608 and Section 19(b) of the Exchange Act.[574] CAT LLC also noted that the Commission is entitled to request additional budget or cost information it views as necessary to better evaluate those fees.[575] CAT LLC also stated that it already provides significant cost transparency through the public disclosure of its quarterly budget information and its financials, and that it is already actively engaged in cost discipline efforts, including through a designated cost-management working group.[576] CAT LLC further explained that Participants are subject to regulatory requirements to implement CAT and oversee their members and cannot have their compliance subject to a third party without such restrictions.[577] CAT LLC added that the Commission itself could have its ability to oversee the securities markets undermined if CAT is subject to review by a third party without regulatory restrictions.[578] In response, one commenter stated that the CAT LLC Response Letter did not meaningfully address its concerns about the lack of a cost control mechanism.[579]

CAT LLC provided a further response to commenters that recommended the adoption of an independent cost review mechanism for CAT costs,[580] stating that a review process is not necessary or appropriate.[581] CAT LLC explained that it is already actively involved in cost discipline efforts, such as through a designated cost management working group, and already provides ''significant cost transparency'' by publishing its quarterly budget information and financial information.[582] CAT LLC also stated that such a review process would go beyond the requirements of Rule 613 and would be unnecessary because changes to the funding model would be filed as a plan amendment under Rule 608 of Regulation NMS and CAT fees for Industry Members would be filed pursuant to Section 19(b) of the Exchange Act, and both processes would permit the public to comment on such proposals.[583] CAT LLC further stated that providing a third-party that does not have regulatory obligations control over the annual budget could ''impermissibly restrict the Participants from discharging their regulatory obligations'' and undermine the Commission's ability to oversee the securities markets.[584] CAT LLC also responded to the commenter that urged the Commission to annually approve the CAT budget [585] by stating that such an approval process would not be necessary or appropriate as CAT LLC is a private entity subject to the requirements of the Exchange Act, not a governmental entity, and CAT fees would be filed with the Commission under Rule 608 of Regulation NMS and Section 19(b) of the Exchange Act and subject to the Commission's review for consistency with the Exchange Act.[586]

[556] *Id.* at 26.

[557] *See* Citadel July Letter at 33–35.

[558] *Id.* at 3, 32–33. One other commenter echoed some of these same considerations. *See* MMI July Letter at 4.

[559] *See* Citadel July Letter at 3, 33.

[560] *Id.*

[561] *Id.*

[562] *See* FIA Letter at 3. *See also* Citadel August Letter at 2.

[563] FIA Letter at 5.

[564] *See* Citadel July Letter at 3, 34.

[565] *See* CAT LLC July 2023 Response Letter at 26.

[566] *Id.*

[567] *See* Citadel July Letter at 32.

[568] *See* CAT LLC July 2023 Response Letter at 12.

[569] *Id.*

[570] *Id.*

[571] *Id.*

[572] *Id.*

[573] *See* SIFMA May 2023 Letter at 3, 8–10. *See also* SIFMA October 2022 Letter at 5–6; SIFMA January 2023 Letter at 2, 5–6; SIFMA June 2023 Letter at 2, n.10, 4; Citadel July Letter at 3, 33; FIA Letter at 5.

[574] *See* CAT LLC May 2023 Response Letter at 10.

[575] *Id.*

[576] *Id.*

[577] *Id.*

[578] *Id.*

[579] *See* SIFMA June 2023 Letter at 2.

[580] *See* Citadel July Letter at 33; FIA Letter at 5; MMI July Letter at 2; SIFMA June 2023 Letter at 2; *id.* at n.10; Virtu Letter at 4.

[581] *See* CAT LLC July 2023 Response Letter at 19.

[582] *Id.* at 20.

[583] *Id.* at 19–20.

[584] *Id.* at 20.

[585] *See* Citadel July Letter at 33.

[586] *See* CAT LLC July 2023 Response Letter at 20–21.

Furthermore, CAT LLC stated that the Commission can request budget and financial information from CAT LLC if necessary for the evaluation of CAT fee filings.[587]

In response to the commenter that asked whether the Participants would have an incentive to manage costs because they proposed to allocate most costs to Industry Members,[588] CAT LLC stated that it ''strongly disagrees with the suggestion that the Participants would not be incentivized to control CAT costs if they are only responsible for one-third of the CAT costs going forward.'' [589] CAT LLC stated that the Participants have been focused on cost management when paying 100% of CAT costs and will continue this focus since they will be paying one-third of CAT costs, a ''significant incentive to keep costs at an appropriate level.'' [590]

In response to comments expressing concern about increasing CAT operating costs,[591] CAT LLC described its commitment to cost management,[592] stating that cost management is a top priority and that it works to reduce costs in a number of ways, including through the Cost Management Working Group comprised of senior members of the Participants that works to find and address cost management needs.[593] CAT LLC also noted that Rule 613 and the CAT NMS Plan ''impose significant regulatory obligations on the Participants regarding how to design, build and operate the CAT System'' and that the Commission could compel the Participants to comply with Rule 613 or the CAT NMS Plan through enforcement actions if CAT LLC and the Participants ever fail to do so.[594] CAT LLC stated that its largest cost driver is the processing and storage of CAT data in the cloud, representing 75% of all CAT costs.[595] CAT LLC stated that CAT NMS Plan requirements ''do not allow for any material flexibility in cloud architecture design choices, processing timelines (*e.g.,* the use of non-peak processing windows), or lower-cost storage costs,'' limiting CAT LLC's cost management efforts, and provided examples where CAT LLC and the Plan Processor worked to optimize cloud cost savings despite regulatory constraints.[596] CAT LLC described other steps it has taken to save costs, such as through requests to the Commission for exemptive relief and litigation challenging the Commission's interpretation of specific requirements of the CAT NMS Plan,[597] as well as identification of other changes that could substantially lower costs but would require exemptive relief or the filing of a Plan amendment.[598]

In response to one commenter's recommendation that CAT LLC work with the Commission to identify technical requirements that could be modified to reduce costs without sacrificing the key benefits of the CAT system,[599] CAT LLC stated that both it and the Plan Processor work to identify and raise with Commission staff potential fundamental changes to the CAT NMS Plan that would limit costs without compromising on regulatory goals, and provided examples of such changes.[600]

The Commission acknowledges the comments expressing concern about increases to the CAT operating budget, particularly why it is now five times the amount estimated in the CAT NMS Plan Approval Order,[601] and the comments urging the need for a cost review mechanism,[602] but believes the Participants have reasonably explained why they chose not to include an independent cost review mechanism for budgeted CAT costs for the reasons stated above and in the Notice. Given the transparency of the budget and Rule 19b–4 process, the one-third allocation of costs to Participants, which provides them with at least some incentive to control costs, and the pre-existing requirement for an independent audit of all fees, costs and expenses incurred by the Participants prior to filing this amendment,[603] it is reasonable not to have an additional independent cost-review mechanism for the reasons set forth above. The Commission believes that the incentive to control costs still exists even if the Participants pass-through to Industry Members some or most of the costs of the CAT. This is because, in order to pass-through CAT costs, the Participants would have to submit rule filings under the Section 19(b) fee filing process. To the extent the Participants fail to control costs, their ability to demonstrate that a proposed fee is reasonable and consistent with the Exchange Act may be compromised. While the above obligations and controls are sufficient, other cost discipline mechanisms proposed by CAT LLC would provide beneficial cost transparency, which would help keep fees and costs reasonable.[604] For example, (1) Section 9.2(a) of the CAT NMS Plan requires CAT LLC to make public an audited balance sheet, income statement, statement of cash flows and statement of changes in equity, and requires the Operating Committee to maintain a system of accounting established and administered in accordance with GAAP and to prepare financial statements or information supplied to the Participants in accordance with GAAP;[605] (2) CAT LLC publicly provides the annual operating budget and updates to the budget on the CAT NMS Plan website and also has held webinars about CAT costs and alternative funding models; (3) involvement by CAT LLC and FINRA CAT in efforts to reduce CAT costs through CAT working groups and review of options to lower costly needs and obtain services in a cost-effective manner; and (4) Commission oversight of CAT funding through attendance at Operating Committee, Subcommittee and working group meetings and review of the Proposed Amendment and any associated CAT fees.[606] Additionally, the specification of the items required to be included in the operating budget is

[587] *Id.* at 21.

[588] *See* FIA Letter at 4–5.

[589] *See* CAT LLC July 2023 Response Letter at 26.

[590] *Id.*

[591] *See* Citadel July Letter at 7–9, MMI July Letter at 1, 4, SIFMA June 2023 Letter at 4; Virtu Letter at 4.

[592] *See* CAT LLC July 2023 Response Letter at 22–25.

[593] *Id.* at 22.

[594] *Id.*

[595] *Id.*

[596] *Id.* at 23.

[597] *Id.* at 24.

[598] *See* CAT LLC July 2023 Response Letter at 25.

[599] *See* Citadel July Letter at 33.

[600] *See* CAT LLC July 2023 Response Letter at 25–26.

[601] *See, e.g.,* Citadel August Letter at 8; Citadel July Letter at 2, 5. The Commission acknowledges a commenter's suggestion that the Commission perform its own analysis of the budget increases. Under the Proposed Amendment, the Participants must submit Rule 19b–4 filings that include a discussion of the budget that was used to calculate the Fee Rate. At such time the Commission, Industry Members and the public will have an opportunity analyze the budget. This Order, which approves the Funding Model, does not weigh-in on the budgets or the resulting Fee Rates.

[602] *See* SIFMA May 2023 Letter at 3, 8–10; Citadel July Letter at 8, 26, 27; FIF and SIFMA Letter at 2, 5–9; SIFMA AMG Letter at 3. *See also* SIFMA October 2022 Letter at 5–6; SIFMA January 2023 Letter at 2, 5–6; SIFMA June 2023 Letter at 2, n.10, 4; Virtu Letter at 4; MMI July Letter at 3–4; FIA Letter at 3, 5.

[603] *See* CAT NMS Plan, *supra* note 2 at Section 6.2(a)(v)(B).

[604] *See* Notice, *supra* note 7, 88 FR at 17117.

[605] *See* CAT NMS Plan, *supra* note 2, at Section 9.2(a). Section 9.2(a) states that unaudited statements shall be subject to year-end adjustments and may not include footnotes.

[606] *See* Notice, *supra* note 7, 88 FR at 17117. CAT LLC also lists the following as cost-control mechanisms: (1) CAT LLC must operate on a break-even basis, in which fees would be used to recover costs and a reserve, and a surplus would be treated as an operational reserve to offset future fees (*see* CAT NMS Plan, *supra* note 2, at Section 11.1(c)); (2) CAT LLC qualifies as a Section 501(c)(6) business league, which means it is not organized for profit and no part of its net earnings can inure to the benefit of any private shareholder or individual (26 U.S.C. 501(c)(6)).

appropriate in that it will help the Commission, Industry Members and others evaluate CAT costs for purposes of commenting on CAT fees when they are proposed under Section 19(b) of the Exchange Act.[607] This additional detail should provide sufficient information about the budget for the Commission to determine whether such proposed fees are reasonable, and obviate the need for a separate Commission approval of the CAT budget, as suggested by commenters.[608] Additionally, the Commission understands that technology costs account for more than 90% of the CAT budget[609] and thus believes that it is appropriate for the CAT NMS Plan to require the Participants to separate such costs into costs for cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs.[610]

One commenter requested further information to be provided on technology costs.[611] The Participants would be required to describe each line item (including such technology costs) in the fee filings for Industry Member CAT Fees and the Historical CAT Assessment, including the reasons for changes in each line item from the prior CAT fee filing, and that this information would be provided with sufficient detail to demonstrate the budget or Historical CAT Costs (as applicable) is reasonable and appropriate.[612] Because the Participants are also assessed CAT fees, they have at least some incentive similar to that of the Industry Members to keep costs down. As discussed above, the Commission believes that this incentive still exists even if the Participants pass-through to Industry Members some or most of the costs of the CAT, because any effort to pass on costs would require Participants to submit filings under the Section 19(b)(2) rule filing process. Moreover, to the extent the Industry Members have concerns about the amounts allocated for each category in a particular budget, those concerns can be raised when the fee filings are submitted for Prospective CAT fees. The Section 19(b)(2) rule filing process provides an opportunity for public comments and will allow commenters to raise concerns if they believe fees, including CAT Fees, are not reasonable and equitably allocated, would result in unfair discrimination, or would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. While a commenter stated that the Commission is a conflicted party due to its use of the CAT and its responsibility to review CAT fee filings,[613] the Commission is not a party to the Plan.[614] Moreover, as regulator of the Participants, the Commission oversees and enforces compliance with the Plan, as well as consistency of any fees with statutory and regulatory standards.[615]

Additionally, one commenter recommended the inclusion of the Commission's line item costs associated with its usage and design of the CAT in the budget.[616] In response,[617] CAT LLC responded that, because all costs related to CAT are a result of the Commission's adoption of Rule 613 and the total costs are reflected in the budget, it would be impractical to break out Commission-specific costs and would not be useful as a practical matter.[618] The Commission agrees that it would be impractical to add a Commission-specific line item in the budget, in part because it would be difficult to separate costs associated with Commission use of the CAT system from costs associated with Participant use of the CAT system.[619] Moreover, the implementation of the CAT—while mandated by the Commission through Rule 613—has been managed by the Participants and the Plan Processor; the Commission does not believe that any changes to its design have been made that are inconsistent with the CAT NMS Plan as approved in 2016, such that the inclusion of a line item in the budget attributing certain design costs to the Commission would be inaccurate and misleading.[620]

The Commission acknowledges the enhancements a commenter suggested to reduce CAT operating costs by modifying the technical specifications (*e.g.,* by moving certain timelines to T+2 from T+1) and streamlining the reporting submission process (*e.g.,* implementing further data validation),[621] but such suggestions are better addressed in the context of a separate plan amendment. The commenter also suggested that the CAT Operating Committee and the Commission stop making any changes to the CAT and noted that there are several changes that are currently subject to exemptive relief that are slated for development.[622] The Commission disagrees that the changes cited by the commenter are new CAT NMS Plan requirements; indeed the relevant Commission orders granting exemptive relief discuss the various requirements under the CAT NMS Plan that form the basis of the relief granted.[623] Furthermore, any amendments to the requirements in the CAT NMS Plan must be filed with the Commission and published for notice and comment and generally shall not become effective unless approved by the Commission.[624] Regarding the suggested enhancements to improve CAT transparency,[625] the CAT NMS Plan and Rules 608 and 613 of Regulation NMS provide for sufficient advance notice of material changes to the CAT system and related costs. As discussed above, changes to the CAT NMS Plan must be filed with the Commission as an NMS plan amendment pursuant to Rule 608 of Regulation NMS and therefore be subject to notice and comment, and the Commission shall consider, in determining to approve the amendment, the impact of the amendment on efficiency, competition and capital formation.[626] Additionally, Section 6.9 of the CAT NMS Plan requires a Supermajority Vote of the CAT Operating Committee in order to make Material Amendments[627] to the Technical Specifications. Section 6.9, however, does not provide unfettered discretion to the CAT Operating

[607] 15 U.S.C. 78s(b).

[608] *See* proposed Section 11.1(a)(i); proposed Section 11.3(a)(iii)(B) (requiring the information to be provided in the Industry Member CAT Fee filings submitted by the Participants to be of sufficient detail to demonstrate that the budget for the upcoming year, or part of year as applicable, is reasonable and appropriate).

[609] *See* Notice, *supra* note 7, 88 FR at 17090.

[610] *Id.* at 17117.

[611] *See supra* note 522.

[612] *See* proposed Section 11.3(a)(iii)(B); proposed Section 11.3(b)(iii)(B)(II).

[613] *See* SIFMA May 2023 Letter at 9–10.

[614] *See* 17 CFR 242.608(a)(1) (stating that NMS plans are filed by two or more SROs).

[615] *See* 17 CFR 242.608(b)(2), (c), (d); 17 CFR 242.613(h).

[616] *See* SIFMA May 2023 Letter at 10. CAT LLC May 2023 Response Letter at 11.

[617] *See* SIFMA May 2023 Letter at 10.

[618] *See* CAT LLC May 2023 Response Letter at 11.

[619] All Participants are required to use the CAT in their surveillance programs. *See* CAT NMS Plan, *supra* note 2, at Section 6.10.

[620] For further discussion, *see infra* Section III.A.9.c.–d.

[621] *See* Citadel July Letter at 33–35.

[622] *Id.*

[623] *See* Securities Exchange Act Release No. 97350 (May 18, 2023), 88 FR 33655 (May 24, 2023); Securities Exchange Act Release No. 90689 (Dec.16, 2020), 85 FR 83667 (Dec. 22, 2020); Securities Exchange Act Release No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020).

[624] *See* Rule 608(b)(1); 17 CFR 242.608(b)(1). However, a plan amendment can be put into effect upon filing with the Commission if it is designated as solely administrative, technical or ministerial. *See* Rule 608(b)(3).

[625] *See supra* notes 530–532.

[626] Rule 613(a)(5). 17 CFR 242.613(a)(5).

[627] The CAT NMS Plan defines a ''Material Amendment'' as an amendment to the Technical Specifications that ''would require a Participant or an Industry Member to engage in significant changes to the coding necessary to submit information to the Central Repository pursuant to this Agreement or if it is required to safeguard the security or confidentiality of the CAT Data.'' *See* CAT NMS Plan, *supra* note 2, at Section 6.9(c).

Committee to make changes to the CAT system; any amendments to the CAT Technical Specifications must be consistent with the CAT NMS Plan. If the CAT Operating Committee or the Commission wish to impose additional requirements that are not contemplated by the CAT NMS Plan, such requirements must be proposed through an amendment to the CAT NMS Plan, filed under Rule 608 of Regulation NMS, which must be published for notice and comment.[628] The Commission agrees with the commenter that all CAT operating budgets should remain published on the CAT NMS Plan website, as they have been since 2022, and understands that CAT LLC will continue to do so in the future.[629] Therefore, the Commission does not believe it is necessary to add an explicit requirement to this effect.

The use of budgeted CAT costs is appropriate to determine the Fee Rate because it ties the Fee Rate to the costs that the CAT will likely incur during the relevant period which are also the Prospective CAT Costs that will need to be apportioned among the Participants and CAT Executing Brokers.[630] Should the use of budgeted costs result in a budget surplus, that surplus would translate to lower fees in the coming year because there would be a lower requirement for reserves.[631] Also, using budgeted costs to determine the Fee Rate facilitates financial stability, allowing CAT LLC to collect fees before bills become payable.[632]

The requirements that the Operating Committee approve a ''reasonable'' operating budget for CAT LLC,[633] that fees, costs and expenses be ''reasonable'' and that they be ''reasonably budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee'' [634] is appropriate in the public interest.[635] The existing CAT NMS Plan did not include such language, potentially providing the Participants full discretion to pass along to Industry Members costs that are not reasonable. Such costs could have included costs that were incurred due to Participant mismanagement, costs that were inflated or costs that should reasonably be allocated to only the Participants. Requiring these costs to be reasonable and reasonably budgeted imposes discipline on CAT spending, and the Commission, Industry Members and others will be able to review budget information during the rule filing process under Section 19(b) of the Exchange Act.

c. Reserve

CAT LLC proposed to add a requirement to Section 11.1(a)(i) of the CAT NMS Plan that the budget shall include ''a reserve and such other cost categories as reasonably determined by the Operating Committee to be included in the budget.'' [636] CAT LLC also proposed to add paragraph (ii) to Section 11.1(a) of the CAT NMS Plan to state that ''[f]or the reserve referenced in paragraph (a)(i) of this Section, the budget will include an amount reasonably necessary to allow the Company to maintain a reserve of not more than 25% of the annual budget.'' [637] Moreover, CAT LLC would calculate the reserve based on the amount of the budget other than the reserve.[638] In addition, proposed subparagraph (ii) of Section 11.1(a) of the CAT NMS Plan would state that ''[t]o the extent collected CAT fees exceed CAT costs, including the reserve of 25% of the annual budget, such surplus will be used to offset future fees.'' [639] Proposed Section 11.1(a)(ii) of the CAT NMS Plan provides that ''[f]or the avoidance of doubt, the Company will only include an amount for the reserve in the annual budget if the Company does not have a sufficient reserve (which shall be up to but not more than 25% of the annual budget).'' [640]

One commenter stated that the proposed reserve of not more than 25% of the CAT budget is excessive.[641] The commenter noted that the support provided for the proposed change was the Participants' difficulty in forecasting CAT costs, which the commenter stated demonstrates a need for an independent cost review mechanism.[642]

The Proposed Amendment providing that the annual operating budget include a reserve of not more than 25% of the annual budget is reasonable.[643] Because the CAT is a critical regulatory tool/system, the CAT needs to have a stable funding source to build financial stability to support the Company as a going concern.[644] Funding for the CAT, as noted in Section 11.1(b), is the responsibility of the Participants and the industry.[645] Because CAT fees are charged based on the budget, which is based on anticipated volume, it is reasonable to have a reserve on hand to prevent a shortfall in the event there is an unexpectedly high volume in a given year. A reserve would help to assure that the CAT has sufficient resources to cover costs should there be unanticipated costs or costs that are higher than expected. CAT LLC explained that the proposed reserve amount of not more than 25% of the annual budget is based on a comparison of actual CAT costs and budgeted costs from 2020 through the first nine months of 2022 that demonstrated that actual CAT costs exceeded budgeted costs by 20% during this time period.[646] CAT LLC also noted difficulty in predicting variable CAT costs in concluding to cap the reserve at 25%.[647] Additionally, CAT LLC explained that CAT fees will be collected approximately three months after trading activity on which a CAT fee is based, or 25% of the year.[648] CAT LLC stated that the reserve would be available to address funding needs related to this three-month delay.[649] No commenter stated that they thought anything higher than a 25% reserve was necessary and no commenter provided an alternative solution to make sure that CAT remains funded and able to pay its bills. The Commission therefore believes that a reserve of no more than 25% is reasonable based on the factors listed by CAT LLC.

In addition, the Commission recognizes that if CAT fees exceed CAT costs, including the reserve, the surplus will be used to offset future fees, and that a reserve will only be included in the annual budget on which the fees are based if CAT LLC does not have a

[628] *See* Rule 608(b)(1). 17 CFR 242.608(b)(1).

[629] *See* CAT LLC May 2023 Response Letter at 10–11.

[630] *See* Notice, *supra* note 7, 88 FR at 17114.

[631] *See infra* Section III.A.5.c. (Reserve).

[632] *See id.*

[633] *See* proposed Section 11.1(a).

[634] Proposed Section 11.3(a)(i)(C).

[635] One commenter complained that Participants were not providing the public with an opportunity to review the budget until after it was finalized. *See* SIFMA May 2023 Letter at 8–10. As CAT LLC explained, this appears to be based on a misunderstanding, as CAT LLC provides the annual budget and quarterly updates to the public. *See* CAT LLC May 2023 Response Letter at 11.

[636] Proposed Section 11.1(a)(i).

[637] Proposed Section 11.1(a)(ii).

[638] Specifically, proposed Section 11.1(a)(ii) of the CAT NMS Plan would state that ''[f]or the avoidance of doubt, the calculation of the amount of the reserve would exclude the amount of the reserve from the budget.''

[639] *Id.*

[640] *Id.*

[641] *See* SIFMA January 2023 Letter at 6, n.15. *See also* Citadel July Letter at 26 (objecting to the requirement that Industry Members ''fund an additional 25% reserve over budgeted amounts each year.'').

[642] *See* SIFMA January 2023 Letter at 6, n.15.

[643] *See* Notice, *supra* note 6, 88 FR at 17090.

[644] *See* CAT NMS Plan, *supra* note 2, at Section 11.2(f).

[645] *Id.* at Section 11.1(b).

[646] *See* Notice, *supra* note 7, 88 FR at 17090.

[647] *Id.*

[648] *Id.* at 17091.

[649] *Id.*

sufficient reserve, which would be limited to 25% of the annual budget.[650] The Commission also recognizes that the Company must operate on a break-even basis and that any surpluses would be treated as an operational reserve to offset future fees and not be distributed to Participants as profits.[651] The Commission further recognizes that proposed Section 11.1(a)(ii) states that CAT LLC will only include an amount for the reserve in the annual budget if the Company does not have a sufficient reserve; therefore, the Participants would not be collecting additional fees if CAT LLC already has a reserve of 25% of the annual budget.[652] Furthermore, the reserve would be calculated by CAT LLC based on the amount of the budget other than the reserve because the reserve is meant to fund CAT LLC to pay its bills if necessary.[653] These requirements should obviate the need for a refund mechanism.

To date, CAT has been solely funded by the Participants.[654] The CAT NMS Plan, however, requires funding for the CAT come from both Participants and Industry Members.[655] It is the Commission's view that establishing a reserve is a reasonable way to ensure that future funding is secured from all intended parties, rather than relying on Participants alone.

d. Fee Filings Under Section 19(b) of the Exchange Act for Industry Member CAT Fees

CAT LLC described the information that Participants would be required to include in their fee filings to be made pursuant to Section 19(b) of the Exchange Act and Rule 19b–4 thereunder for Industry Member CAT Fees in proposed paragraph (B) of proposed Section 11.3(a)(iii) of the CAT NMS Plan.[656] Specifically, such filings would be required to include with regard to the CAT Fee: (A) the Fee Rate; (B) the budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including (1) technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration, and (6) public relations costs, a reserve and/or such other categories as reasonably determined by the Operating Committee to be included in the budget and the reason for changes in each such line item from the prior CAT Fee filing; [657] (C) a discussion of how the budget is reconciled to the collected fees; and (D) the projected total executed equivalent share volume of all transactions in Eligible Securities for the year (or remainder of the year, as applicable), and a description of the calculation of the projection. This detail would describe how the Fee Rate is calculated and explain how the budget used in the calculation is reconciled to the collected fees.[658] In addition, CAT LLC proposed to state that the budgeted CAT costs described in the fee filings must provide sufficient detail to demonstrate that the CAT budget used in calculating the CAT Fees is reasonable and appropriate.[659]

The collection of CAT Fees from Industry Members is subject to Section 11.6 of the CAT NMS Plan regarding the Financial Accountability Milestones.[660] Accordingly, CAT LLC proposed to state that Participants will not make fee filings pursuant to Section 19(b) of the Exchange Act [661] regarding CAT Fees until the Financial Accountability Milestone related to Period 4 described in Section 11.6 of the CAT NMS Plan has been satisfied.[662]

As discussed above, one commenter stated that the budget line-item categories, which would be included in the Section 19(b) fee filings, are too high level.[663] The commenter urged the inclusion of much greater detail and specificity on the budget spending choices, especially in technology, to allow Industry Members and the public to understand and evaluate CAT spending decisions.[664]

The proposed process for implementing CAT Fees related to Prospective CAT Costs for Industry Members is reasonable. Under the Executed Share Model, the Participants would be required to submit fee filings pursuant to Section 19(b) of the Exchange Act to change the Fee Rates for Industry Members twice a year, once at the beginning and once during the year.[665] It is appropriate to accompany each Fee Rate change with a Section 19(b) fee filing because it would provide notice to Industry Members and the public of the Fee Rate change and permit such entities to provide comment on the change.

In addition to the budget information already provided by the Participants on the CAT website, the detail provided in the fee filings for the budget would provide transparency into the budget as it would describe the line items of the budget and any changes to the budget and allow the public the ability to comment on the budget.[666] The fee filings must discuss how the budget is reconciled to collected fees, which would provide the public an opportunity to comment on the effectiveness of the reconciliation.[667] The Executed Share Model establishes the framework for Industry Member CAT fees; details of the Budgeted CAT Costs will be provided in the Section 19(b) fee filings submitted by the Participants.

One commenter objected to how the Proposed Amendment addressed the Financial Accountability Amendments Period 4 [668] expenses.[669] The commenter stated that if full implementation does not occur by September 27, 2023, the Operating Committee cannot recover from Industry

[650] *Id. See also* proposed Section 11.1(a)(ii).

[651] The CAT NMS Plan requires that a surplus of the Company's revenues over its expenses be treated as an operational reserve to offset future fees. *See* CAT NMS Plan, *supra* note 2, at Section 11.1(c).

[652] *See* Notice, *supra* note 7, 88 FR at 17091. *See also* proposed Section 11.1(a)(ii).

[653] *See* Notice, *supra* note 7, 88 FR at 17090. *See also* proposed Section 11.1(a)(ii).

[654] One commenter objected to CAT LLC's reference to the financial viability of the CAT as an attempt to ''coerce the Commission into prematurely opining on a funding proposal that does not meet basic Exchange Act requirements.'' *See* Citadel August Letter at 1. For the reasons explained in this order, the Funding Model meets the applicable standard for approval.

[655] *See* CAT NMS Plan, *supra* note 2, at Section 11.1(b), 11.3(a) and (b).

[656] CAT LLC stated that it expected the fee filings required to be made by the Participants pursuant to Section 19(b) of the Exchange Act with regard to CAT Fees to be filed pursuant to Section 19(b)(3)(A) of the Exchange Act and Rule 19b–4(f)(2) thereunder. CAT LLC further stated that in accordance with Section 19(b)(3)(A) of the Exchange Act and Rule 19b–4(f)(2) thereunder, such fee filings would be effective upon filing. *See* Notice, *supra* note 7, 88 FR at 17095, n.38. Pursuant to Section 19(b)(3)(A) and Rule 19b–4(f)(2), a proposed rule change can take effect upon filing with the Commission if designated by the SRO as establishing or changing a due, fee, or other charge imposed by the SRO. 15 U.S.C. 78s(b), 15 U.S.C. 78s(b)(3)(A), 17 CFR 240.19b–4(f)(2).

[657] CAT LLC stated that it intends to include any other categories as reasonably determined by the Operation Committee. Accordingly, this provision refers to ''such other categories as reasonably determined by the Operating Committee to be included in the budget.'' Notice, *supra* note 7, 88 FR at 17095, n.39.

[658] As a practical matter, the fee filing would provide the exact fee per executed equivalent share to be paid for the CAT Fees, by multiplying the Fee Rate by one-third and describing the relevant number of decimal places for the fee. *See* Notice, *supra* note 7, 88 FR at 17095, n.40.

[659] *See* proposed Section 11.3(a)(iii)(B).

[660] *See* CAT NMS Plan, *supra* note 2, at Section 11.6; *see also supra* note 18.

[661] 15 U.S.C. 78s(b).

[662] *See* proposed Section 11.3(a)(iii)(C); *see also* CAT NMS Plan, *supra* note 2, at Section 11.6(a)(i)(D).

[663] *See supra* note 521.

[664] *Id.*

[665] *See* proposed Section 11.3(a)(i)(A)(I) and (II).

[666] *See* proposed Section 11.3(a)(iii)(B).

[667] *Id.*

[668] *See* CAT NMS Plan, *supra* note 2, at Section 11.6.

[669] *See* Citadel July Letter at 24.

Members any expenses related to Period 4.[670] The commenter explained that the Proposed Amendment states that costs incurred during Period 4 may be allocated to Industry Members and that the Operating Committee had requested exemptive relief to extend the deadline for full implementation until August 31, 2024, which would allow the Participants to recover all Period 4 expenses from Industry Members.[671] The commenter stated that the expenses related to Period 4 would likely total more than $400 million, and expressed the belief that this amount may be allocated in its entirety to Industry Members if the terms of the CAT NMS Plan are not enforced.[672]

The commenter stated that this issue is ''highly relevant to the Commission's analysis of the 2023 Funding Proposal'' [673] and recommended three alternatives for the Commission to address the matter: (1) to state that relevant financial accountability provisions will be enforced as written and permit the Operating Committee to allocate Period 4 expenses only to the extent permitted by the CAT NMS Plan (reduced by 75%, and by 100% if full implementation does not occur by September 27, 2023); [674] (2) defer judgment and provide that Period 4 expenses cannot be allocated to Industry Members; [675] or (3) defer judgment and permit the Operating Committee to allocate Period 4 expenses to Industry Members and analyze the potential impact of allocating all Period 4 costs to Industry Members on market efficiency, competition and capital formation.[676] The commenter urged the Commission to conduct this analysis before waiting for a subsequent filing, stating that once the Commission approves an allocation methodology, ''the CAT Operating Committee would simply apply that approved methodology to the costs incurred during a specific time period.'' [677]

In response to the commenter's criticism that the Proposed Amendment does not adequately address the Period 4 expenses,[678] CAT LLC stated that it recognizes the applicability of the Financial Accountability Milestones on the collection of CAT Fees and Historical CAT Assessments.[679] CAT LLC stated that the Participants will not file CAT fee filings until they believe any applicable Financial Accountability Milestone has been satisfied, and noted that the Commission has not made a determination regarding the Participants' satisfaction of the Financial Accountability Milestones.[680]

As stated by the Participants, the Proposed Amendment acknowledges that the Participants are prohibited from submitting Exchange Act filings regarding Prospective CAT Fees until the Financial Accountability Milestone related to Period 4 described in Section 11.6 of the CAT NMS Plan has been satisfied.[681] This is a reasonable approach for addressing how fee filings will be handled in conjunction with a determination of the Participants' compliance with the Financial Accountability Milestones. Under existing Section 11.6, the Participants will not be able to recover the full costs of the CAT for a period if the relevant Financial Accountability Milestone has not been satisfied.[682] Because the amount the Participants cannot recover from Industry Members is not known until the Financial Accountability Milestone has been satisfied, it would not be appropriate for the Participants to require Industry Members to pay CAT costs in advance, as the amount of such costs could be reduced.[683] The Commission acknowledges the concerns raised and suggestions offered by the commenter but the Commission is not making a finding on the satisfaction of the Period 4 Financial Accountability Milestone in this Order nor is such a finding required. This filing merely establishes the framework under which costs will be allocated, not the amount to be allocated. The Participants will not be able to submit filings to recover Prospective CAT Fees or Historical CAT Assessments to recover Period 4 expenses until the Period 4 Milestone has been satisfied. When they do submit such filings, the question of compliance will impact how much can be recovered under the applicable framework; this model will then be used to determine how to allocate that amount.

e. Participant CAT Fees for Prospective CAT Costs

CAT LLC proposed to describe the Participant CAT Fees related to Prospective CAT Costs in proposed Section 11.3(a)(ii) of the CAT NMS Plan. Specifically, under proposed Section 11.3(a)(ii)(A) of the CAT NMS Plan, each Participant that is a national securities exchange will be required to pay the CAT Fee for each transaction in Eligible Securities executed on the exchange in the prior month based on CAT Data. Each Participant that is a national securities association will be required to pay the CAT Fee for each transaction in Eligible Securities executed otherwise than on an exchange in the prior month based on CAT Data.[684] The CAT Fee for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate determined pursuant to proposed Section 11.3(a)(i).[685]

CAT LLC also proposed Section 11.3(a)(ii)(B) of the CAT NMS Plan to provide that Participants would only be required to pay CAT Fees when Industry Members are required to pay CAT Fees. CAT Fees charged to Industry Members become effective in accordance with the requirements of Section 19(b) of the Exchange Act.[686] In contrast, CAT Fees charged to Participants are implemented via an approval of the CAT Fees by the Operating Committee in accordance with the requirements of the CAT NMS Plan.[687] Specifically, to implement the Participant CAT fees, CAT LLC proposed to add the Proposed Participant Fee Schedule, entitled ''Consolidated Audit Trail Funding Fees,'' to Appendix B of the CAT NMS Plan. Proposed Paragraph (a) stated that ''[e]ach Participant shall pay the CAT Fee set forth in Section 11.3(a) of the CAT NMS Plan to Consolidated Audit Trail, LLC in the manner prescribed by Consolidated Audit Trail, LLC on a monthly basis based on the Participant's transactions in Eligible Securities in the prior month.'' [688] Because each Participant would be required to pay a CAT Fee once a Fee Rate has been established by the Operating Committee, and because of the time and burden required, CAT LLC stated that it would not submit an amendment to the CAT NMS Plan every time the Fee Rate is established or adjusted.[689]

It is reasonable to require that each Participant pay a CAT Fee related to

[670] *Id.*

[671] *Id.* at 24–25. The commenter further explained that the Commission has reserved judgment on whether the terms of the Financial Accountability Amendments in Section 11.6 of the CAT NMS Plan would be enforced.

[672] *Id.* at 25.

[673] *Id.*

[674] *See* Citadel July Letter at 25.

[675] *Id.*

[676] *Id.*

[677] *Id.* at 26.

[678] *Id.* at 24.

[679] *See* CAT LLC July 2023 Response Letter at 30.

[680] *Id.*

[681] *See* proposed Section 11.3(a)(iii)(C).

[682] *See* CAT NMS Plan, *supra* note 2, at Section 11.6.

[683] *See infra* note 807.

[684] *See* proposed Section 11.3(a)(ii)(A).

[685] *Id.*

[686] *See* proposed Section 11.3(a)(i)(A)(I) and (II); *see also* 15 U.S.C. 78s(b).

[687] *See* Notice, *supra* note 7, 88 FR at 17094.

[688] Paragraph (a) of the Proposed Participant Fee Schedule.

[689] *See* Notice, *supra* note 7, 88 FR at 17108–09.

Prospective CAT Costs for each transaction in the prior month based on CAT Data.[690] The CAT NMS Plan requires the Participants to contribute to the funding of the CAT.[691] Additionally, as CAT LLC explained, the Executed Share Model recognizes the Participants (as market regulators) as one of the three parties who have primary roles in a transaction,[692] so it is appropriate for a transaction-based funding model to assess a CAT Fee upon the Participants.

The Commission also believes it is reasonable that proposed Section 11.3(a)(ii)(B) provides that the Participants would be required to pay CAT Fees only when Industry Members are required to pay CAT Fees. The CAT Fees charged to Participants would be implemented through an approval of the CAT Fees by the Operating Committee and not through a plan amendment submitted each time the Fee Rate changes,[693] while CAT Fees charged to Industry Members may only become effective in accordance with the requirements of Section 19(b) of the Exchange Act.[694] However, both Participants and Industry Members would be subject to the same Fee Rate[695] so it is appropriate to provide that Participants would be required to pay the Participant CAT Fee once CAT Fees based on the Fee Rate are effective for Industry Members.

The Proposed Participant Fee Schedule is reasonable. As the Proposed Participant Fee Schedule requires each Participant to pay the CAT Fee detailed in Section 11.3(a) of the CAT NMS Plan on a monthly basis, based on the Participant's transactions in Eligible Securities in the prior month, in the manner prescribed by CAT LLC,[696] the proposed fee schedule is appropriate because it imposes the Executed Share Model's Participant CAT Fee obligation on the Participants by specifically requiring the Participants to pay a CAT Fee in accordance with the Executed Share Model. The requirement in the Proposed Participant Fee Schedule clearly sets forth how the Participants will calculate their monthly CAT Fee obligation, and therefore does not believe that it is necessary for the Participants to submit an amendment to the CAT NMS Plan each time the Fee Rate changes; the formula for calculating fees will be constant although the Fee Rate that would be applied, which is objectively determined, will change only following a Participant fee filing under section 19(b) of the Exchange Act.[697] This approach is reasonable in this circumstance because the CAT NMS Plan sets forth the Executed Share Model, the Participants are required to pay CAT Fees pursuant to the CAT NMS Plan and the same Fee Rate that would apply to Industry Members would apply to Participants.[698]

6. Historical CAT Assessment

a. Calculation of Historical CAT Assessment

Under the Executed Share Model, Past CAT Costs will be recovered from CEBBs and CEBSs through Historical CAT Assessments.[699] Pursuant to proposed Section 11.3(b) of the CAT NMS Plan the Operating Committee will establish one or more Historical CAT Assessments depending upon the timing of any approval of the Proposed Amendment and the completion of the Financial Accountability Milestones.[700] In establishing a Historical CAT Assessment, the Operating Committee will determine a ''Historical Recovery Period'' [701] and calculate a ''Historical Fee Rate'' [702] for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBS will pay a fee (the Historical CAT Assessment) for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate reasonably determined pursuant to proposed Section 11.3(b)(i).[703]

The actual amount of Past CAT Costs to be recovered through the Historical CAT Assessments would be reduced by an amount of ''Excluded Costs.'' [704] The resulting amount would be defined as ''Historical CAT Costs'' in proposed Section 11.3(b)(i)(C) of the CAT NMS Plan. Proposed Section 11.3(b)(i)(C) states that ''[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee.'' [705] The Historical CAT Costs would not include an amount of ''Excluded Costs'' so that Industry Members would not be assessed a Historical CAT Assessment to recover such Excluded Costs.[706]

Certain commenters objected to the method of calculating the Historical CAT Assessment using current transaction activity.[707] One commenter disagreed with the proposed method ''due to difficulty of using current volumes and trading activity by individual Industry Members as a mechanism for assessing costs in the past where the trading volumes and individual Industry Member trading activity likely were different.'' [708] The commenter also stated that the proposed assessment of Past CAT Costs on current Industry Members based on their current trading activity is not fair or reasonable because new Industry Members would be assessed a share of Past CAT Costs even if they were not in operation when those costs were incurred, and that such costs would be attributable to Industry Members that are no longer in business.[709] The

[690] *See* proposed Section 11.3(a)(ii).

[691] *See* CAT NMS Plan, *supra* note 2, at Section 11.1(b), Section 11.3(a).

[692] *See* Notice, *supra* note 7, 88 FR at 17104.

[693] *Id.* at 17108–09.

[694] *See* proposed Section 11.3(a)(i)(A). *See also* 15 U.S.C. 78s(b).

[695] *See* proposed Section 11.3(a)(ii)(A) and (B).

[696] *See* paragraph (a) of the Proposed Participant Fee Schedule.

[697] *See* Notice, *supra* note 7, 88 FR at 17109.

[698] *See* proposed Section 11.3(a)(ii)(A) and (B).

[699] *See* Notice, *supra* note 7, 88 FR at 17086; *see also* proposed Section 11.3(b); *supra* notes 32–33 and accompanying text (defining Historical CAT Assessments).

[700] *See* proposed Section 11.3(b)(iii). *See* Notice, *supra* note 7, 88 FR at 17096, n.43; *see also supra* note 18 and CAT NMS Plan, *supra* note 2, at Section 11.6.

[701] The Historical Recovery Period would be used to calculate the Historical Fee Rate for a Historical CAT Assessment. Proposed Section 11.3(b)(i)(D) of the CAT NMS Plan provides the Operating Committee with the discretion to reasonably establish the length of the Historical Recovery Period as long as no such period is less than 24 months and more than five years. *See infra* Section III.A.6.b.

[702] The Historical Fee Rate is the fee rate used to calculate the Historical CAT Assessment. *See infra* Section III.A.6.c.

[703] *See* proposed Section 11.3(b)(iii)(A).

[704] The Excluded Costs would be $48,874,937 in CAT costs incurred from November 15, 2017 through November 15, 2018, and $14,749,362 in costs related to the termination of the initial Plan Processor. *See* CAT LLC July 2023 Response Letter at 19.

[705] Proposed Section 11.3(b)(i)(C).

[706] *See* Notice, *supra* note 7, 88 FR at 17111. According to the Proposed Amendment, ''[e]ach Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.'' Proposed Section 11.3(b)(i)(C). The Historical CAT Costs would be Past CAT Costs minus the Excluded Costs. *Id.*

[707] *See* SIFMA June 2023 Letter at 4; SIFMA January 2023 Letter at 7; SIFMA October 2022 Letter at 5; Citadel July Letter at 24, 32; MMI July Letter at 4; Virtu Letter at 4.

[708] SIFMA October 2022 Letter at 5.

[709] *See* SIFMA January 2023 Letter at 7. *See also* FIA Letter at 4 (stating that it is ''patently unfair'' to allocate all historical costs to current Industry

commenter added that the Proposed Amendment has not explained how allocating ''approximately $350 million in historical costs . . . to a small group of executing broker firms based on current market volumes'' is consistent with the Exchange Act or how it would impact liquidity and competition.[710] The commenter stated that since the proposed allocation would be based on current market share and unrelated to the firms or activity that contributed to historical costs, there would be little ability for executing brokers to pass on such costs.[711] Another commenter stated that the Proposed Amendment lacked a clear mechanism for Industry Members to pass-on historical costs to other market participants.[712] The commenter stated, ''[i]t appears challenging for the CAT Operating Committee to allocate historical costs in a way that is directly tied to historical activity, which makes it more difficult for Industry Members to pass-on these costs to other market participants.'' [713] Another commenter suggested a ''review of current market percentage share dictating cost structure—*e.g.,* industry fluctuations—how current market share [sic] not reflective of past/future market shares- need for adjustments.'' [714]

One commenter recommended a reevaluation of the use of transaction fees to assess Past CAT Costs,[715] and suggested an alternative approach in which Past CAT Costs would be assigned to Industry Members ''based on the lesser of (i) the CAT Fees that would be assessed on an Industry Member under the Participants' proposed approach of using current trading activity or (ii) the CAT Fees that would be assessed on such member based on their prior trading activity in the years since 2016 when the CAT was being built and then operationalized . . . '' [716] The commenter stated that the share of Past CAT Costs belonging to Industry Members that are no longer in business could be calculated using this approach and then divided equally among the current Industry Members, while Industry Members that entered into business after certain Past CAT Costs were incurred would be assessed Past CAT Costs starting in the year after which they started operating based on the above approach.[717] The commenter acknowledged that, while this approach would require more effort by the Participants, it would be ''significantly closer to the fair and reasonable standard in the Exchange Act than the approach set forth by the Participants in the Executed Share Model.'' [718]

Additionally, commenters objected to the allocation of Past CAT Costs to Industry Members.[719] One commenter stated that the Participants have failed to justify the allocation of Past CAT Costs to Industry Members during the period when only Participants were reporting to the CAT.[720] Certain commenters stated that Industry Members should not be assessed any fees related to the decision to employ Thesys Technologies, LLC as the Plan Processor or legal or consulting fees incurred by the Participants in the creation of the CAT NMS Plan.[721] One commenter stated that the Proposed Amendment fails to provide how much of the allocation to Industry Members is related to Thesys Technologies, LLC, and, therefore, the Participants have not demonstrated how the Executed Share Model is consistent with the Exchange Act.[722]

Another commenter stated that it would be inappropriate to allocate any costs related to Thesys Technologies, LLC's role as the plan processor, including the costs of transitioning to a new plan processor, or the Operating Committee's costs of litigation against the Commission.[723] The commenter expressed concern about a lack of transparency into Historical CAT Costs and the size of such costs, stating that the historical costs are excessive and inconsistent with the CAT NMS Plan.[724] The commenter stated that a lack of transparency into historical costs raises questions about whether Industry Members would be allocated costs for the period when Thesys Technologies, LLC was the plan processor, noting that the Proposed Amendment only intended to exclude $64 million in costs related to the ''failed engagement of Thesys,'' when the costs were much higher;[725] whether Industry Members would be allocated costs related to litigation between the Operating Committee and the Commission;[726] and whether Industry Members would be allocated costs related to repeated filing of prior funding models.[727] The commenter stated that, without knowing the total amount of Historical CAT Costs, or basic information about such costs, the Commission cannot determine whether Historical CAT Costs are reasonable and cannot assess the impact of the proposed allocation on market liquidity, efficiency and competition.[728] For example, the commenter stated that the CAT Operating Committee has not assessed ''whether trading activity may decline or bid-offer spreads may widen.'' [729] The commenter stated that the CAT Operating Committee ''recklessly argues'' that the proposed allocation of Historical CAT Costs is not concerning due to the existence of higher transaction-based fees.[730] In addition, the commenter stated that Industry Members have borne nearly all of the total CAT-related costs due to ''a near-constant barrage'' of changes to technical specifications.[731] The commenter recommended not allocating any historical costs to Industry Members.[732]

One commenter stated that Industry Members were not subject to CAT obligations before the CAT NMS Plan's approval, had no input into the selection of the service providers, and that ''it is difficult to envision how the Participants could demonstrate that such an allocation provides for the equitable allocation of reasonable fees due to the fact that the CAT NMS Plan

Members based on their current market activity because current ''Industry Members had no control over the stops and starts incurred in the development of CAT.'').

[710] SIFMA June 2023 Letter at 4. This statement was echoed by another commenter. *See* Virtu Letter at 4.

[711] SIFMA June 2023 Letter at 4. The commenter also stated that the assessment of ''retroactive liability for monies spent that private parties had no control over'' for public purposes would violate the Fifth Amendment Takings Clause. *See infra* Section III.9.d.

[712] *See* Citadel July Letter at 24.

[713] *Id.* at 32.

[714] *See* MMI July Letter at 4.

[715] *See* SIFMA October 2022 Letter at 5.

[716] SIFMA January 2023 Letter at 7.

[717] *Id.*

[718] *Id.*

[719] *See* SIFMA January 2023 Letter at 6–7; SIFMA October 2022 Letter at 7; SIFMA June 2022 Letter at 7; Citadel July Letter at 3, 23, 24, 31, 32; FIA Letter at 4; MMI July Letter at 4 (suggesting accountability for historic costs).

[720] *See* SIFMA October 2022 Letter at 7.

[721] *See* SIFMA June 2022 Letter at 7; SIFMA January 2023 Letter at 6–7; FIA Letter at 4.

[722] *See* SIFMA June 2022 Letter at 7.

[723] *See* Citadel July Letter at 31.

[724] *Id.* at 23. *See also* Citadel August Letter at 6–7.

[725] *See* Citadel July Letter at 23. *See also id.* at 23, n.100; *id.* at 8 (stating that ''missteps'' by the Operating Committee related to the hiring of the initial plan processor and the hiring of FINRA CAT to replace the initial plan processor resulted in ''wasted expenditures'' of more than $100 million). *See also* Citadel August Letter at 7.

[726] *See* Citadel July Letter at 23. *See also* Citadel August Letter at 7.

[727] *See* Citadel July Letter at 24. *See also* Citadel August Letter at 7.

[728] *See* Citadel August Letter at 7.

[729] *Id.*

[730] *Id.*

[731] *See* Citadel July Letter at 31. The commenter noted that in 2016, the Commission estimated that broker-dealers would incur 90% of total CAT-related costs, even if not allocated any costs for building and operating the CAT. The commenter stated that updates to these estimates would show that this figure would underestimate their cost burdens. *See id.*

[732] *Id.* at 3, 31, 32.

did not exist during the period prior to its approval.'' [733]

The commenter also stated that the Participants have not analyzed different alternatives to collecting Past CAT Costs and the costs associated with such alternatives or the costs associated with the proposed approach.[734] The commenter urged collaboration between the Participants and Industry Members on the allocation of Past CAT Costs.[735]

With respect to one commenter's criticisms of the calculation and assessment of the Historical CAT Assessment,[736] CAT LLC stated that the commenter had a ''persistent misunderstanding'' of the Historical CAT Assessment, explaining that, contrary to the commenter's assertions in its comment letters, the Historical CAT Assessment would be assessed based on current market activity, not past market activity.[737] While the fee rate would be calculated based on Historical CAT Costs, the fee rate would be applied to current market transactions.[738] CAT LLC stated that the process of assessing fees for the Historical CAT Assessment would be exactly the same as with CAT Fees related to Prospective CAT Costs, and would be passed through in the same manner if a CEBB or CEBS so chooses.[739] CAT LLC also stated that it would provide CAT Executing Brokers with details of their CAT fees to facilitate this process.[740]

In response, the commenter stated that the CAT LLC Response Letter did not meaningfully address the concerns it raised about ''the inability of firms defined as 'executing brokers' to transfer fees to those who may be more appropriate to bear certain historical CAT costs in the first place.'' [741] CAT LLC reiterated that the Historical CAT Assessment would be assessed in the same manner as CAT Fees for Prospective CAT Costs, and could likewise be passed-through by the CEBB or CEBS,[742] and that CAT LLC would provide the relevant data to help CAT Executing Brokers pass-through the fees.[743]

In response to a commenter that stated that a small group of broker-dealers would shoulder the Historical CAT Costs and asked whether allocating these costs to a small group of executing brokers based on current market volume is consistent with the Exchange Act,[744] CAT LLC stated that ''almost 700 of the 1100 Industry Members would have an obligation to contribute to Historical CAT Costs. . . not just a few CAT Executing Brokers'' [745] and since ''the fees vary in accordance with the market activity of the CAT Executing Brokers, certain CAT Executing Brokers will have large bills for very significant market activity.'' [746] CAT LLC also reiterated that the Section 11.2(b) of the CAT NMS Plan contemplates that Industry Members would contribute to funding the costs of the CAT and that CAT Executing Brokers may pass on their CAT fees so they would not have any obligation to pay CAT fees.[747] CAT LLC also clarified that Industry Members would be allocated Historical CAT Costs over a period of time that would be no less than 24 months and no more than five years, not in a single lump sum,[748] and stated that ''it would potentially be appropriate to spread the Historical CAT Costs over a time period of a little less than three years, a time period which is within the two to five year range for the Historical Recovery Period.'' [749]

In response to the commenter that stated that Industry Members are bearing almost all of the CAT-related costs,[750] CAT LLC stated that the commenter was conflating the Industry Members' internal costs to comply with CAT reporting requirements with the direct costs of the CAT.[751] CAT LLC stated that the Proposed Amendment is intended to address the funding of the direct costs of the CAT and not Participants and Industry Members' compliance costs.[752]

CAT LLC provided a comparison of Historical CAT Costs to Prospective CAT Costs, demonstrating that the $233 million 2023 CAT budget is approximately 45% of the $518 million in Historical CAT Costs (through 2022).[753] CAT LLC stated that it expects to propose a fee rate for the Historical CAT Assessment that would be similar to or smaller than other transaction-based fees, and provided examples in which CEBBs and CEBSs would be assessed less than 1/1000 of a penny per executed equivalent share.[754] CAT LLC noted that broker-dealers are currently charged other transaction-based fees that are higher than the proposed CAT fees.[755]

In response to commenters that objected to the allocation to Industry Members of Historical CAT Costs related to the initial Plan Processor,[756] CAT LLC stated that the Historical CAT Costs to be allocated to Industry Members would not include two categories of costs related to the initial Plan Processor: $48,874,937 in CAT costs incurred from November 15, 2017 through November 15, 2018, and $14,749,362 in costs related to the termination of the initial Plan Processor.[757] CAT LLC stated that the Participants would remain responsible for these costs.[758]

In the Commission's view, the proposed recovery of Past CAT Costs via the Historical CAT Assessment is reasonable, and it is reasonable to require that each CEBB and CEBS pay a Historical CAT Assessment for each transaction in the prior month based on CAT Data.[759] First, current Industry Members are actively reporting to the CAT [760] and therefore receive the benefits from the CAT. The CAT provides more effective oversight of market activity, which could increase investor confidence, resulting in expanded investment opportunities and increased trading activity.[761] Second, it would be difficult to impose fees on Industry Members for their activity in the past because some Industry Members may no longer be in business and such Industry Members would not have taken into consideration the Historical CAT Assessment when entering into the past transactions.[762] In this case, the Commission understands,

[733] *See* SIFMA June 2022 Letter at 7.

[734] *See* SIFMA October 2022 Letter at 5.

[735] *Id. See also* SIFMA October 2022 Letter at 2 (''[w]e also reiterate our call for the Participants to work with SIFMA and the industry in a collaborative manner to establish a viable CAT funding model.'').

[736] *See* SIFMA May 2023 Letter at 8; SIFMA October 2022 Letter at 4–5; *supra* notes 708–713 and accompanying text.

[737] *See* CAT LLC May 2023 Response Letter at 9.

[738] *Id.*

[739] *Id.*

[740] *Id.*

[741] *See* SIFMA June 2023 Letter at 2.

[742] *See* CAT LLC July 2023 Response Letter at 16.

[743] *Id.*

[744] *See* SIFMA June 2023 Letter at 4. *See also* Virtu Letter at 4.

[745] *See* CAT LLC July 2023 Response Letter at 15.

[746] *Id.*

[747] *Id.*

[748] *Id.*

[749] *See* CAT LLC July 2023 Response Letter at 17. CAT LLC also provided a comparison of Historical CAT Costs to Prospective CAT Costs, demonstrating that the $233 million 2023 CAT budget is approximately 45% of the $518 million in Historical CAT Costs (through 2022). *Id.*

[750] *See* Citadel July Letter at 31.

[751] *See* CAT LLC July 2023 Response Letter at 16.

[752] *Id.*

[753] *Id.* at 17.

[754] *Id.* at 18.

[755] *Id.* at 18–19.

[756] *See* FIA Letter at 4; Citadel July Letter at 23, 31.

[757] *See* CAT LLC July 2023 Response Letter at 19.

[758] *Id.*

[759] *See* proposed Section 11.3(a)(ii)(A) and (iii)(A).

[760] *See* Notice, *supra* note 7, 88 FR at 17113.

[761] CAT NMS Plan Approval Order, at 81 FR at 84993.

[762] *See* Notice, *supra* note 7, 88 FR at 17113.

from CAT LLC's analysis of Industry Members, that there is ''substantial continuity'' among the largest Industry Members, going back to 2020,[763] and thus it is likely that the Industry Members responsible for substantial transaction activity in 2020 (and perhaps earlier, beyond the scope of CAT LLC's analysis) would also be responsible for substantial transaction activity in 2023, mitigating concerns that current Industry Members would be responsible for CAT fees for the past transaction activity of non-operational Industry Members.

Additionally, requiring CAT Executing Brokers to pay Historical CAT Assessments is appropriate because the Participants have thus far paid all Past CAT Costs and the CAT NMS Plan contemplates that both Industry Members and Participants would fund the Company.[764] Furthermore, it is reasonable, in the Commission's view, for the Participants to exclude certain costs from the Past CAT Costs to be recovered from Industry Members; for example, such excluded costs would encompass costs incurred when Industry Members as a group were not reporting to the CAT, and costs associated with the conclusion of the relationship with the Initial Plan Processor.[765] CAT LLC also proposes to require the Operating Committee, in determining fees on Participants and Industry Members, to take into account fees, costs and expenses (including legal and consulting fees) reasonably incurred by the Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.[766]

In the Commission's view, requiring the Operating Committee to take into account fees, costs and expenses (including legal and consulting fees) *reasonably* incurred by the Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT, when determining fees for Participants and Industry Members will constrain the Operating Committee from assessing fees based on costs and expenses that are not reasonable. Further, the proposed exclusion of the ''Excluded Costs'' from Past CAT Costs is reasonable in the Commission's view because it would not require all costs incurred by the Participants to be recovered from Industry Members through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor.[767]

Finally, the Proposed Amendment sets forth a process that the Commission believes will offer an appropriate level of transparency into Historical CAT Costs. In response to a commenter that objected to the level of transparency provided about the total amount of Historical CAT Costs, and basic information about such costs, and stated that, as a result, the Commission cannot determine whether Historical CAT Costs are reasonable and cannot assess the impact of the proposed allocation on market liquidity, efficiency and competition,[768] as discussed in Section III.A.6.e. herein, the Section 19(b) fee filings to be filed with the Commission by the Participants to impose the Historical CAT Assessment on Industry Members must include detailed information on the Historical CAT Costs, including the amount and type of Historical CAT Costs, and will allow the public the ability to comment on the Historical CAT Costs.[769] In addition to addressing all relevant statutory requirements, including the requirements that the fees are reasonable, equitably allocated, not unfairly discriminatory, and do not unduly burden competition,[770] these proposed Section 19(b) fee filings must contain ''sufficient detail to demonstrate that such costs are reasonable and appropriate,'' [771] which would provide the public and the Commission the detail needed to evaluate the Historical CAT Assessments. Once the proposed Section 19(b) fee filings are filed by the Participants, the Commission will review them for consistency with the Exchange Act and the CAT NMS Plan.

In response to the comment that stated that the CAT Operating Committee has not assessed ''whether trading activity may decline or bid-offer spreads may widen,'' [772] and in response to the comment that the CAT Operating Committee ''recklessly argues'' that the proposed allocation of Historical CAT Costs is not concerning due to the existence of higher transaction-based fees,[773] as stated above, the Proposed Amendment does not approve *per se* the amount of the Historical CAT Costs; it sets forth the model but leaves the amount and description of the Historical CAT Costs for the Section 19(b) fee filings. The Commission recognizes, however, that the Participants have disclosed the amount of the Historical CAT Costs in the Proposed Amendment.[774] While such Historical CAT Costs are not being approved by the Commission at this time, the Commission understands that such amounts provide an indication of what might be charged. In this regard, the Commission notes the Participants have included in Exhibit C to the Proposed Amendment a chart setting forth an example Historical CAT Assessment, for illustrative purposes only, that each CAT Executing Broker would pay based on its transactions in Eligible Securities in December 2022 related to CAT costs from prior to 2022. The chart indicated that the Historical Fee Rate for the assumed December 2022 period was $0.0000417950 per executed equivalent share. The Commission believes that potential Historical CAT Assessments are likely to be significantly lower than fees assessed pursuant to Section 31.[775] Accordingly, the Commission believes that any potential impact on trading activity or bid-ask spreads would likely be limited.

b. Historical Recovery Period

The ''Historical Recovery Period'' would be used to calculate the Historical Fee Rate for a Historical CAT Assessment.[776] Proposed Section 11.3(b)(i)(D) of the CAT NMS Plan provides the Operating Committee with the discretion to reasonably establish the length of the Historical Recovery Period as long as no such period is less than 24 months and more than five years. CAT LLC analyzed potential recovery periods and determined that the Historical Fee Rate calculated using

[763] *Id.* at 17113, n.116 (stating that there has been substantial continuity in the largest Industry Members over time and providing statistics about the continuity).

[764] *See, e.g.,* CAT NMS Plan, *supra* note 2, at Section 11.1(b), Section 11.1(c), Section 11.2(b), Section 11.3.

[765] *See* Notice, *supra* note 7, 88 FR at 17111.

[766] *See* proposed Section 11.1(c) (emphasis added).

[767] *See* Notice, *supra* note 7, 88 FR at 17111.

[768] *See* Citadel August Letter at 7.

[769] *See* proposed Section 11.3(b)(iii)(B)(II).

[770] 15 U.S.C. 78f(b)(4), 15 U.S.C. 78o–3(b)(5); 15 U.S.C. 78f(b)(5), 15 U.S.C. 78o–3(b)(6); 15 U.S.C. 78f(b)(8), 15 U.S.C. 78o–3(b)(9).

[771] *See* proposed Section 11.3(b)(iii)(B)(II).

[772] *See* Citadel August Letter at 7.

[773] *Id.*

[774] *See* Notice, *supra* note 7, 88 FR at 17110–11 (providing Historical CAT Costs prior to 2022). CAT LLC also provided updated Historical CAT Costs through 2022. *See* CAT LLC July 2023 Response Letter at 17.

[775] *See infra* notes 1099–1102 and accompanying text (stating that a comparison to recent Section 31 fees of $0.00009 per share to $0.0004 per share indicates that the anticipated Historical Fee Rate and Fee Rate, assuming the Fee Rate is of a similar magnitude as the Historical Fee Rate, are expected to be relatively small). *See also infra* note 1102 (discussing another example Historical Fee Rate that was provided in the CAT LLC July 2023 Response Letter at 18–19 that was close to the Historical Fee Rate in Exhibit C of the Proposed Amendment).

[776] *See* proposed Section 11.3(b)(i)(D)(I).

the proposed Historical Recovery Period of two to five years would be reasonable for Industry Members even if they had to pay both the ongoing CAT Fee and the Historical Fee Assessment simultaneously.[777] Additionally, in determining the range for the Historical Recovery Period, CAT LLC ''sought to weigh the need for a reasonable Historical Fee Rate that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loan notes to the Participants in a timely fashion.'' [778] In the Commission's view, it is reasonable for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years. According to the Participants, ''[t]he length of the Historical Recovery Period used in calculating each Historical Fee Rate will be reasonably established by the Operating Committee based on the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment.'' [779] The Operating Committee is authorized by the CAT NMS Plan to establish the funding of CAT LLC, including the fees to be paid by Participants and Industry Members.[780] Because the Historical Recovery Period is used in the calculation of Historical CAT Assessments to recover costs incurred to fund the CAT, the Commission views it as appropriate for the Operating Committee to determine a reasonable length of time for the Historical Recovery Period since the Operating Committee has authority over CAT funding pursuant to the Plan.

c. Historical Fee Rate

The Historical Fee Rate would be used to calculate Historical CAT Assessments. The Operating Committee will calculate the Historical Fee Rate for each Historical CAT Assessment by dividing the Historical CAT Costs for each Historical CAT Assessment by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period.[781] Additionally, proposed Section 11.3(b)(i)(A) states that once the Operating Committee has approved a Historical Fee Rate, the Participants will be required to file with the Commission, pursuant to Section 19(b) of the Exchange Act,[782] the Historical CAT Assessment to be charged to Industry Members using the Historical Fee Rate.[783] Industry Members would be required to pay such Historical CAT Assessment using such Historical Fee Rate once such Historical CAT Assessment is in effect in accordance with Section 19(b) of the Exchange Act.[784]

Proposed Section 11.3(b)(i)(E) of the CAT NMS Plan provides that ''[t]he Operating Committee shall reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.'' [785] CAT LLC would allow the Operating Committee to base its projected total executed equivalent share volume on the prior twelve months, but to use its discretion to analyze the likely volume for the upcoming year.[786] Participants would be required to describe the calculation of the projection in their fee filings submitted to the Commission, pursuant to Section 19(b) of the Exchange Act, to implement the Historical CAT Assessments on Industry Members.[787]

The calculation of the Historical Fee Rate by dividing Historical CAT Costs by the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period [788] is reasonable. First, it is appropriate for the Historical Fee Rate to be based on Historical CAT Costs. The Proposed Amendment defines Historical CAT Costs as Past CAT Costs minus the Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee [789] (*e.g.,* the Excluded Costs).[790] It is appropriate to use the Historical CAT Costs related to a Historical CAT Assessment to calculate the Historical Fee Rate used to calculate the Historical CAT Assessment because the Participants are seeking to recover the Historical CAT Costs through the Historical CAT Assessment.[791] The use of Historical CAT Costs is appropriate to determine the Historical Fee Rate because it ties the Historical Fee Rate to the costs that the CAT has incurred and will be apportioned among the CAT Executing Brokers for recovery. Second, it is appropriate to use the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period to calculate the Historical Fee Rate because this would provide the likely volume for the Historical Recovery Period to be used as the denominator, similar to the manner in which the Fee Rate for Prospective CAT Fees would be calculated. This proposed projection of total executed equivalent share volume based on the prior twelve months is appropriate because it balances the use of data that is sufficiently long to avoid short term fluctuations while providing data close in time to the calculation of the Fee Rate or Historical Fee Rate.[792] Additionally, it is appropriate for CAT LLC to permit the Operating Committee to use its discretion to analyze the likely volume for the upcoming year.[793] This would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate. Furthermore, since the Participants would be required to describe the calculation of the projected total executed equivalent share volume in the fee filings submitted to the Commission, pursuant to Section 19(b) of the Exchange Act, to implement the Historical CAT Assessments on Industry Members, the public will have an opportunity to review the projection and provide comment.[794]

d. Length of Time Historical CAT Assessment Would Be in Effect

Proposed Section 11.3(b)(i)(D)(II) of the CAT NMS Plan would describe the length of time that a Historical CAT Assessment would be in effect. This period of time may be longer or shorter than the Historical Recovery Period used to calculate the Historical Fee Rate for a Historical CAT Assessment. Each Historical CAT Assessment calculated

[777] *See* Notice, *supra* note 7, 88 FR at 17096–97. CAT LLC acknowledged that the Historical CAT Assessment would need to be calculated using up-to-date Historical CAT Costs and executed equivalent share volume. *Id.* at 17097.

[778] *Id.* at 17096.

[779] *Id.* at 17097.

[780] *See* CAT NMS Plan, *supra* note 2, at Section 11.1(b).

[781] *See* proposed Section 11.3(b)(i)(A). Proposed Section 11.3(b)(i)(B) provides that the executed equivalent shares used to calculate the Historical CAT Assessment would be counted in the same manner as executed equivalent shares used to calculate CAT Fees related to Prospective CAT Costs.

[782] 15 U.S.C. 78s(b).

[783] *See* proposed Section 11.3(b)(i)(A).

[784] *Id.; see also* 15 U.S.C. 78s(b); *see infra* Section III.A.6.e. (Historical CAT Assessment—Fee Filings under Section 19(b) of the Exchange Act for Industry Member CAT Fees) for a discussion of Section 19(b) filing requirements.

[785] Proposed Section 11.3(b)(i)(E).

[786] *See* Notice, *supra* note 7, 88 FR at 17097.

[787] *See* proposed Section 11.3(b)(iii)(B)(II).

[788] *See* proposed Section 11.3(b)(i)(A).

[789] *See* proposed Section 11.3(b)(i)(C).

[790] *See* Notice, *supra* note 7, 88 FR at 17111.

[791] *See* proposed Section 11.3(b)(i)(C).

[792] *See* Notice, *supra* note 7, 88 FR at 17116–17.

[793] *Id.* at 17097.

[794] *See* proposed Section 11.3(b)(iii)(B)(II).

using the Historical Fee Rate would remain in effect until all Historical CAT Costs for that Historical CAT Assessment are collected.[795] CAT LLC stated that ''[a]ny Historical CAT Assessment would remain in effect until the relevant Historical CAT Costs are collected, whether that time is shorter or longer than the Historical Recovery Period used in calculating the Historical Fee Rate.'' [796] The length of time that the Historical CAT Assessment would be in effect would depend ''on the amount of the Historical CAT Assessments collected based on the actual volume during the time that the Historical CAT Assessment is in effect.'' [797]

In the Commission's view, it is reasonable for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected. The Commission understands that the amount of Historical CAT Costs collected will vary depending on how the actual volume compares to the estimated volume. To the extent the actual volume exceeds the estimated volume, a Historical CAT Assessment would be collected faster and thus would be in effect for a shorter period. Similarly, to the extent the actual volume is less than the estimated volume, the Historical CAT Assessment would be collected slower and thus would be in effect for a longer period.

e. Fee Filings Under Section 19(b) of the Exchange Act for Industry Member CAT Fees

Once the Operating Committee has approved a Historical Fee Rate, the Participants shall be required to file with the Commission, pursuant to Section 19(b) of the Exchange Act,[798] such Historical CAT Assessment to be charged Industry Members calculated using such Historical Fee Rate.[799] CAT LLC proposes to provide additional details regarding the fee filings to be filed by the Participants regarding each Historical CAT Assessment pursuant to Section 19(b) of the Exchange Act in proposed Section 11.3(b)(iii)(B) of the CAT NMS Plan. Specifically, this provision would describe that fee filings would be required for each Historical CAT Assessment, the content of such fee filings, and the effect of the Financial Accountability Milestones described in Section 11.6 of the CAT NMS Plan on the fee filings.[800]

Proposed Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan would state that ''Participants will be required to file with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment.'' [801] CAT LLC proposes to provide additional detail about the information that Participants would be required to include in the filings for the Historical CAT Assessments in proposed Section 11.3(b)(iii)(B)(II). The proposed paragraph sets forth the information about the Historical CAT Assessments that should be included in the fee filings required to be made by the Participants pursuant to Section 19(b) of the Exchange Act.[802] Specifically, such filings would be required to include: (A) the Historical Fee Rate; (B) a brief description of the amount and type of Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration, and (6) public relations costs; (C) the Historical Recovery Period and the reasons for its length; and (D) the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period, and a description of the calculation of the projection.[803]

In addition, CAT LLC proposes to clarify that the Historical CAT Costs described in the fee filings must provide sufficient detail to demonstrate that such costs are reasonable and appropriate.[804] Therefore, CAT LLC proposes to add the following sentence to proposed Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan: ''The information provided in this Section would be provided with sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate.'' [805]

Proposed Section 11.3(b)(iii)(B)(III) provides that the Participants will not make CAT fee filings pursuant to Section 19(b) of the Exchange Act [806] regarding a Historical CAT Assessment until any applicable Financial Accountability Milestone has been satisfied. This provision is appropriate as it takes into account existing requirements set forth in Section 11.6 of the CAT NMS Plan that prevent the Participants from recovering fees related to any given Financial Accountability Milestone until that Financial Accountability Milestone has been achieved.[807]

The Commission emphasizes that the fee filings filed with the Commission, pursuant to Section 19(b) of the Exchange Act,[808] to implement each Historical CAT Assessment on Industry Members will need to provide sufficient information to enable the Commission to make a determination on whether and when the Participants have satisfied each of the Financial Accountability Milestones—questions that the Commission is not deciding herein. This Order only approves the establishment of the framework by which the Participants will propose Historical CAT Assessments to be charged to Industry Members.[809]

In the Commission's view, the proposed requirement for the Participants to file fee filings with the Commission, pursuant to Section 19(b) of the Exchange Act,[810] to implement each Historical Fee Assessment on Industry Members is appropriate. The detail provided in the fee filings for the Historical CAT Assessment would provide transparency into the Past CAT Costs as it would describe the amount and type of Historical CAT Costs and allow the public the ability to comment on the Historical CAT Costs.[811] The fee filings must contain sufficient detail to demonstrate that the fees are consistent with the Exchange Act, including that such costs are reasonable and

[795] *See* proposed Section 11.3(b)(i)(D)(II).

[796] Notice, *supra* note 7, 88 FR at 17097.

[797] *Id.*

[798] 15 U.S.C. 78s(b).

[799] *See* proposed Section 11.3(b)(i)(A).

[800] *See* proposed Section 11.3(b)(iii)(B)(I), (II), (III).

[801] Proposed Section 11.3(b)(iii)(B)(II).

[802] 15 U.S.C. 78s(b).

[803] *See* proposed Section 11.3(b)(iii)(B)(II).

[804] *Id.*

[805] *Id.*

[806] 15 U.S.C. 78s(b).

[807] *See, e.g.,* Section 11.6(a)(iv) (''The Participants will only be permitted to collect Post-Amendment Industry Member Fees for Period 1, Period 2, Period 3, or Period 4 at the end of each respective Period.''). Section 11.6 of the CAT NMS Plan is designed to reduce the amount of fees, costs, and expenses that the Participants may recover from Industry Members if the Participants miss the target deadlines established by that Section. To the extent that the Participants miss a target deadline established by Section 11.6, the Participants would be responsible for paying a larger amount of CAT-related fees, costs, and expenses on their own. The Commission expects that the portion of these fees, costs, and expenses that is attributable to for-profit national securities exchanges would likely be paid out of their existing profits, whereas the portion of these fees, costs, and expenses that is attributable to non-profit national securities associations like FINRA would likely be paid out of past revenue or new and/or existing fees. The Commission would evaluate any such new or existing fees in accordance with Section 6(b)(4) and Section 15A(b)(5) of the Exchange Act. 15 U.S.C. 78f(b)(4); 15 U.S.C. 78o–3(b)(5).

[808] 15 U.S.C. 78s(b).

[809] The Commission does not believe it could determine whether the Historical CAT Costs associated with a Financial Accountability Milestone are ''reasonable or appropriate'' under Section 11.3(b)(iii)(B)(II) without such information.

[810] 15 U.S.C. 78s(b).

[811] *See* proposed Section 11.3(b)(iii)(B)(II).

appropriate,[812] and provide the public with the detail needed to evaluate the Historical CAT Assessments for comment.

The Proposed Amendment offers an appropriate level of transparency into the Past CAT Costs used for the Historical CAT Assessment so that the industry and the public will be able to understand and assess the Past CAT Costs and the Historical Fee Rate. The Proposed Amendment requires the Section 19(b) fee filings to be submitted to the Commission by the Participants to establish the Historical CAT Assessments for Industry Members to contain the following information: ''(A) the Historical Fee Rate; (B) a brief description of the amount and type of Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration, and (6) public relations costs; (C) the Historical Recovery Period and the reasons for its length; and (D) the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period, and a description of the calculation of the projection.'' [813] CAT LLC explained that this information ''would provide Industry Members and other interested parties with a clear understanding of the calculation of each Historical CAT Assessment and its relationship to Historical CAT Costs.'' [814] In the Commission's view, the detail provided in the fee filings for the Historical CAT Assessment would provide transparency into the Past CAT Costs as the filings would describe the amount and type of Historical CAT Costs and allow the public the ability to comment on the Historical CAT Costs.[815] Additionally, pursuant to the Proposed Amendment being approved, the fee filings will also need to contain ''sufficient detail to demonstrate that such costs are reasonable and appropriate,'' [816] which would provide the public and the Commission the detail needed to evaluate the Historical CAT Assessments for consistency with the Exchange Act and the CAT NMS Plan.

f. Past CAT Costs and Participants

Proposed Section 11.3(b)(ii) of the CAT NMS Plan would clarify that the Participants would not be required to pay the Historical CAT Assessment as the Participants previously have paid all Past CAT Costs. It would state that, ''[b]ecause Participants previously have paid Past CAT Costs via loans to the Company, Participants would not be required to pay any Historical CAT Assessment.'' [817] In addition, proposed Section 11.3(b)(ii) of the CAT NMS Plan would state that the Historical CAT fees collected from Industry Members would be allocated to Participants for repayment of the outstanding loan notes of the Participants to the Company on a pro rata basis; such fees would not be allocated to Participants based on the executed equivalent share volume of transactions in Eligible Securities.[818] Specifically, proposed Section 11.3(b)(ii) of the CAT NMS Plan would state that ''[i]n lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.'' [819] Furthermore, proposed Section 11.3(b)(ii) of the CAT NMS Plan would emphasize that ''[t]he Historical CAT Assessment is designed to recover two-thirds of the Historical CAT Costs.'' [820]

The proposed allocation of the Historical CAT Assessment solely to CEBSs and CEBBs, and ultimately Industry Members, is reasonable. The Historical CAT Assessment will still be divided into thirds.[821] CAT LLC stated that the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee ''will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans'' and that the Participants will also be 100% responsible for the Excluded Costs.[822] CAT LLC explained that the terms of the loan agreements between CAT LLC and the Participants dictate that repayment of the notes will be on a pro rata basis.[823] The pro rata basis for cancelling the loans is appropriate because repayment of the loans made by the Participants is required pro rata per the loan agreements between the Participants and CAT LLC.[824] The CAT NMS Plan permits the Participants to seek recovery of CAT costs from Industry Members, which includes Past CAT Costs.[825] However, similar to cancelling the loans, the Executed Share Model would require the Participants to pay CAT fees related to Prospective CAT Costs.[826]

7. Calculation Information; Billing and Collection of CAT Fees

CAT LLC proposed to provide Participants and CAT Executing Brokers with details regarding the calculation of their CAT Fees upon request.[827] Specifically, CAT LLC proposed to add Section 11.3(a)(iv)(A) to the CAT NMS Plan to provide that ''[d]etails regarding the calculation of a Participant or CAT Executing Brokers' CAT Fees will be provided upon request to such Participant or CAT Executing Broker.'' [828] Similarly, for the Historical CAT Assessment, under proposed Section 11.3(b)(iv)(A), ''at minimum, such details would include each CAT Executing Broker's executed equivalent share volume and corresponding fee.'' [829] In both cases, the new sections require that these details be separated by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.[830] Additionally, for each CAT Fee and Historical CAT Assessment, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee also by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.[831] The Commission understands that the publicly available aggregate statistics will be made available by CAT LLC on a monthly basis with each invoice.

CAT LLC stated that consistent with Section 11.1(d) of the CAT NMS Plan, it will adopt policies, procedures and practices regarding the billing and

[812] *Id.*

[813] Proposed Section 11.3(b)(iii)(B)(II).

[814] Notice, *supra* note 7, 88 FR at 17098.

[815] *See* proposed Section 11.3(b)(iii)(B)(II).

[816] *Id.*

[817] Proposed Section 11.3(b)(ii).

[818] *See* Notice, *supra* note 7, 88 FR at 17112.

[819] Proposed Section 11.3(b)(ii).

[820] *Id.*

[821] *Id.*

[822] Notice, *supra* note 7, 88 FR at 17097, n.48.

[823] *Id.* at 17112.

[824] *Id.*

[825] *See* CAT NMS Plan, *supra* note 2, at Section 11.1(b), Section 11.3(b).

[826] *See* proposed Section 11.3(a)(ii).

[827] *See* Notice, *supra* note 7, 88 FR at 17086.

[828] Proposed Section 11.3(a)(iv)(A).

[829] Proposed Section 11.3(b)(iv)(A).

[830] *See* proposed Section 11.3(a)(iv)(A); proposed Section 11.3(b)(iv)(A)

[831] *See* proposed Section 11.3(a)(iv)(B); proposed Section 11.3(b)(iv)(B).

collection of fees Section 11.4 of the CAT NMS Plan.[832] In addition, pursuant to Section 11.4 of the CAT NMS Plan, CAT LLC will establish a system for the collection of CAT fees from Participants and Industry Members.[833] Under Section 11.4 of the CAT NMS Plan, the Participants must require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.[834]

Similarly, as set forth in Section 3.7(b) of the CAT NMS Plan, each Participant must pay all fees or other amounts required to be paid under the Plan within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated) (''Payment Date''). The Participant shall pay interest on the outstanding balance from the Payment Date until such fee or amount is paid at a per annum rate equal to the lesser of: (i) the Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law.[835] The Commission did not receive any objections to nor any comments regarding the calculation of this interest rate.

The proposed provision to Participants and CAT Executing Brokers with details regarding the calculation of their CAT Fees upon request is reasonable. In the Commission's view, providing CAT Execution Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT Execution Brokers to confirm the accuracy of their invoices for CAT Fees. The publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees.

8. Additional Changes From Original Funding Model

CAT LLC proposed to delete the term ''Execution Venue'' and its definition from Section 1.1 of the CAT NMS Plan, explaining that this term is not relevant in the Executed Share Model.[836] Section 1.1 of the existing CAT NMS Plan defined ''Execution Venue'' to mean ''a Participant or an alternative trading system ('ATS') (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).'' The Original Funding Model would have imposed fees based on market share to CAT Reporters that are Execution Venues, including ATSs, and fees based on message traffic for Industry Members' non-ATS activities.[837] In contrast, the Executed Share Model does not use the term ''Execution Venue,'' as the Executed Share Model imposes fees based on the executed equivalent shares of transactions in Eligible Securities for three categories of CAT Reporters: Participants, CEBBs and CEBSs.[838]

CAT LLC also proposed to amend Section 11.2(c) and Section 11.3(a) and (b) of the CAT NMS Plan to require Participants and CAT Executing Brokers to pay CAT fees based on the number of executed equivalent shares in a transaction in Eligible Securities instead of based on market share and message traffic.[839]

First, CAT LLC proposed to delete subparagraphs (i) and (ii) of Section 11.2(c) and replace these subparagraphs with the requirement that the fee structure in which the fees charged to ''Participants and Industry Members are based upon the executed equivalent share volume of transactions in Eligible Securities.'' [840] The deleted provisions would have required the Operating Committee, in establishing the funding of the Company, to seek to establish a tiered fee structure in which the fees charged to: (i) CAT Reporters that are Execution Venues, including ATSs, are based upon the level of market share and (ii) Industry Members' non-ATS activities are based upon message traffic.

Second, CAT LLC proposed to amend Sections 11.3(a) and 11.3(b) of the CAT NMS Plan to remove detail regarding fixed fees and fee tiers for market share and message traffic by Participants and Execution Venue ATSs under the Original Funding Model.[841] Section 11.3(a) currently describes the fixed CAT fees to be paid by Participants and Execution Venue ATSs based on market share and Section 11.3(b) currently describes the fixed CAT fees to be paid by Industry Members (other than Execution Venue ATSs) based on message traffic.[842] The text in these sections would be replaced with proposed Sections 11.3(a) and (b), which, as discussed above, would describe the calculation and application of the CAT Fees related to Prospective CAT Costs and the Historical CAT Assessments. These proposed changes to Sections 11.3(a) and (b) would also replace references to ''fixed fees'' with ''fees'' instead. CAT LLC explained that the concept of fixed fees is not relevant in the Executed Share Model.[843]

CAT LLC also proposed to amend Sections 11.1(d), 11.2(c), 11.3(a) and 11.3(b) of the CAT NMS Plan to eliminate tiered fees and related concepts because the Executed Share Model does not utilize tiering.[844] First, CAT LLC proposed to remove a reference to the ''assignment of tiers'' from Section 11.1(d). CAT LLC also proposed to remove two sentences from Section 11.1(d) permitting the Operating Committee to change the tier assigned to any Person. Second, CAT LLC proposed to amend Section 11.2(c) to delete a reference to a tiered fee structure (specifically, deleting the word ''tiered'') so that CAT fees would not be tiered under the Executed Share Model. Third, CAT LLC proposed to delete subparagraph (iii) of Section 11.2(c), which required the Operating Committee, in establishing the funding of the Company, to seek to establish a fee structure in which the fees charged to CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliates between or among CAT Reporters, whether Execution Venues and/or Industry Members).[845] CAT LLC explained that this comparability provision was a factor used to determine the tiers for Industry Members and Execution Venues under the Original Funding Model, but that it is no longer necessary since the proposed Executed Share

[832] *See* Notice, *supra* note 6, 88 FR at 17089.

[833] *Id.* at 17101.

[834] *See* CAT NMS Plan, *supra* note 2, at Section 11.4.

[835] *Id.* at Section 3.7(b). If any such remaining outstanding balance is not paid within thirty (30) days after the Payment Date, the Participants shall file an amendment to this Agreement requesting the termination of the participation in the Company of such Participant, and its right to any Company Interest, with the Commission.

[836] *See* Notice, *supra* note 7, 88 FR at 17099.

[837] *See* CAT NMS Plan, *supra* note 2, at Section 11.3(a)(i) and (ii); Section 11.3(b).

[838] *See* proposed Section 11.3(a)(ii) and (iii); proposed Section 11.3(b)(iii).

[839] *See* Notice, *supra* note 7, 88 FR at 17099.

[840] Proposed Section 11.2(c).

[841] *See* Notice, *supra* note 7, 88 FR at 17100–01.

[842] *See* CAT NMS Plan, *supra* note 2, at Section 11.3(a) and (b).

[843] *See* Notice, *supra* note 7, 88 FR at 17101.

[844] *Id.* at 17100–01.

[845] *Id.* at 17100.

Model would not use a tiered fee structure.[846] Finally, as discussed above, CAT LLC proposed to amend Sections 11.3(a) and (b) to replace the language with proposed Sections 11.3(a) and (b), which would describe the calculation and application of the CAT Fees related to Prospective CAT Costs and the Historical CAT Assessments. CAT LLC states that such proposed changes would remove the references to tiers in Sections 11.3(a)(i) and (ii) and 11.3(b).[847]

In addition, CAT LLC proposed to amend the CAT funding principles to clarify that CAT Fees and the Historical CAT Assessments are intended to be cost-based fees.[848] Specifically, CAT LLC proposed to amend the funding principle set forth in Section 11.2(c) by making a specific reference to ''the costs of the CAT.'' Proposed Section 11.2(c) would state, ''[i]n establishing the funding of the Company, the Operating Committee shall seek . . . to establish a fee structure in which the fees charged to Participants and Industry Members are based upon the executed equivalent share volume of transactions in Eligible Securities, *and the costs of the CAT* (emphasis added).'' [849]

In the Commission's view, the proposed deletion of the term ''Execution Venue'' from the CAT NMS Plan is reasonable because the term is no longer relevant to the CAT NMS Plan. The proposed Executed Share Model does not impose fees on Execution Venues and would instead impose fees on Participants and CAT Executing Brokers (and, ultimately, Industry Members) and therefore it is appropriate to delete the term.

Additionally, it is reasonable to amend Section 11.2(c) and Section 11.3(a) and (b) of the CAT NMS Plan to reflect the proposed use of the number of executed equivalent shares in transactions in Eligible Securities in calculating CAT fees. These changes are appropriate because, unlike the Original Funding Model, the proposed Executed Share Model would not use message traffic, or a tiered fee structure.

Further, the proposed elimination of tiered fees and related concepts from the CAT NMS Plan and the proposed replacement of ''fixed fees'' with references to ''fees'' in the CAT NMS Plan are reasonable. The Original Funding Model would use a tiered fee structure of fixed fees; however, the proposed Executed Share Model would require each Participant and CAT Executing Broker to pay a CAT fee based on its transactions in Eligible Securities.[850] CAT LLC explained that ''[t]he proposed non-tiering approach is simpler and more objective to administer than the tiering approach'' [851] and that removing tiers ''eliminates a variety of subjective analyses and judgments from the model and simplifies the determination of CAT fees.'' [852] Additionally, the Proposed Amendment would replace the concept of ''fixed fees'' with ''fees'' because CAT fees will vary in accordance with the number of executed equivalent shares in a transaction.[853] The proposed elimination of tiered fees and related concepts from the CAT NMS Plan and the proposed replacement of ''fixed fees'' with references to ''fees'' in the CAT NMS Plan are reasonable because these changes conform the CAT NMS Plan funding model to the proposed Executed Share Model.

Additionally, the Proposed Amendment would amend Section 11.2(c) to make clear that the fee structure established by the Operating Committee to charge fees to Participants and Industry Members would also be based on the costs of the CAT.[854] CAT LLC explained that the change clarifies that the CAT fees are cost-based fees designed to recover the cost of the creation, implementation and operation of the CAT.[855] These proposed changes are appropriate because they would update language in the Original Funding Model to reflect the operation of the proposed Executed Share Model.

9. Other Comments

a. Lack of Industry Input

A number of commenters stated that the Proposed Amendment lacks input from the industry.[856] One commenter stated that the Participants did not meaningfully solicit input from the industry when developing the Executed Share Model.[857] Another commenter stated that the Proposed Amendment reflects a lack of representation by executing brokers and offered its participation in future discussions and advisory committees on the topic of CAT funding.[858] One commenter stated that ''[t]he impact of CAT on the brokerage community must be taken seriously by the SRO committee, and brokers need their voice heard on the committee's recommendations. To date, we have seen little evidence of either.'' [859] This commenter also suggested the allocation of human resources to hire industry experts in industry workflows and public-private engagement to assist with building the CAT.[860]

In response, CAT LLC stated that it has engaged with the industry on the funding model over the past seven years, explaining that it has discussed funding model issues with the CAT Advisory Committee, which includes representation from the industry, as well as with industry associations such as SIFMA and the Financial Information Forum, and with individual Industry Members; analyzed and responded to comment letters on the prior proposals; and hosted webinars for the industry on funding issues.[861] CAT LLC stated that it welcomes industry input on the funding model but believes a decision on the model is overdue.[862]

In response, one commenter stated that Industry Members are willing to work with the Commission and the Participants to develop a CAT funding model.[863] The commenter urged collaboration and dialogue between the Participants and the Industry Members before the filing of a formal proposal with the Commission.[864] The commenter also stated that limiting industry input to the notice and comment process for NMS plan amendments is an inefficient process

[846] *Id.*

[847] *Id.* at 17100–01.

[848] *Id.* at 17099.

[849] Proposed Section 11.2(c).

[850] *See* proposed Section 11.3(a)(ii)(A), (a)(iii)(A), (b)(iii)(A).

[851] Notice, *supra* note 7, 88 FR at 17100.

[852] *Id.*

[853] *Id.* at 17101.

[854] *See* proposed Section 11.2(c) (''. . . fees charged to Participants and Industry Members are based upon the executed equivalent share volume of transactions in Eligible Securities, *and the costs of the CAT*.'' (emphasis added)).

[855] *See* Notice, *supra* note 7, 88 FR at 17099.

[856] *See* DASH April 2023 Letter at 2; DASH January 2023 Letter at 3; SIFMA June 2023 Letter at 4; SIFMA May 2023 Letter at 2; SIFMA June 2022 Letter at 2; SIFMA January 2023 Letter at 2; Citadel July Letter at 9–10. *See also* FINRA June 2022 Letter at 8, 9 (advocating for a more inclusive development process that would include input from the industry); MMI July Letter at 2, 4; Virtu Letter at 6 (stating that they would like to have a meaningful dialogue with the Participants and that the best way forward is for the interested parties to meet and devise an equitable solution); FIA Letter at 4 (stating that they have ''raised concerns over the lack of industry participation in the development, operation and cost allocation processes of the CAT'' and they ''believe that at a minimum, the CAT Operating Committee should be reconfigured, with Industry Members comprising the percentage of the Committee equivalent to whatever cost allocation percentage is eventually allocated to them.'').

[857] *See* SIFMA May 2023 Letter at 2. *See also* SIFMA June 2023 Letter at 4, 5; SIFMA June 2022 Letter at 2; SIFMA January 2023 Letter at 2.

[858] *See* DASH April 2023 Letter at 2; DASH January 2023 Letter at 3.

[859] MMI July Letter at 4.

[860] *Id.*

[861] *See* CAT LLC May 2023 Response Letter at 12.

[862] *Id.*

[863] *See* SIFMA June 2023 Letter at 4.

[864] *Id.*

resulting in significant delays.[865] Another commenter stated that the Operating Committee refuses to engage the industry in constructive dialogue, instead choosing to file funding proposals that are inconsistent with the Exchange Act.[866] The commenter also stated that the CAT Advisory Committee has been completely ignored by the Operating Committee and that its recommendations are non-binding.[867]

CAT LLC further responded to two commenters that stated that CAT LLC refused to collaborate with the industry in the development of the Proposed Amendment.[868] CAT LLC stated that it has engaged with the industry over the last seven years, discussing funding model issues with the CAT Advisory Committee, holding industry-wide webinars on funding issues, and meeting with industry associations and individual Industry Members to discuss funding model issues.[869] CAT LLC stated that it has ''repeatedly sought the views of SIFMA and other industry participants on specific aspects of the model.'' [870] CAT LLC listed ideas suggested by the industry that it adopted in revised versions of the funding model [871] and stated ''the current model results from years of modifications that have been made in significant part in response to industry comments to earlier versions.'' [872]

The Commission understands that Industry Members and other market participants have been able to provide input into CAT funding through meetings with CAT LLC, participation in webinars held by CAT LLC on CAT costs and potential alternative funding models,[873] and through the provision of comments on the current and prior proposed funding models.[874] The Commission encourages frequent and constructive collaboration between the industry and CAT LLC.

b. Implementation

One commenter suggested that upon approval of any CAT funding model, Industry Members should be given at least a year ''to implement any necessary changes to systems and processes for them to be able to capture their portion of CAT costs.'' [875] CAT LLC responded that it was unlikely to take Industry Members a year to implement any needed changes, particularly given the relatively small fees likely to be incurred by most small Industry Members that would not require extensive new processes to pay.[876]

The Commission acknowledges this comment but highlights, as did CAT LLC,[877] that the Participants have entirely funded the CAT to date; in the Commission's view, it is imperative that CAT funding be established in a timely manner after approval of the Executed Share Model.

c. Rule 613 and the CAT NMS Plan

Certain commenters stated that the CAT as it is structured today is not what was contemplated by Rule 613 of Regulation NMS.[878] One commenter recommended that the Commission come up with a new structure for the CAT.[879] The commenter stated that Rule 613 and the 2016 CAT NMS Plan do not support CAT as it is currently structured [880] and provided examples where it believes that subsequent changes to the CAT requested by the Commission have caused the CAT to become inconsistent with the requirements of Rule 613 and the 2016 CAT NMS Plan.[881] According to the commenter: (1) Rule 613 requires the reporting of certain events and that the events must be linked to their originating order, but the Commission has required the reporting of events that are not CAT-reportable and are not linked to particular orders (for example, Rule 613 requires the reporting of the cancellation of an order, but the Commission has also required the reporting of messages acknowledging the receipt of a cancellation request); [882] (2) the Commission expanded the CAT to include OTC equities and requests-for-quotes; [883] (3) the CAT NMS Plan contemplates that data will be available to the Commission on a T+5 basis, but the Commission and staff have insisted that certain data be available to the Commission for use before T+5; [884] (4) Rule 613 requires the reporting of every material term of an order, but the Commission has also required the reporting of the port-level settings applicable to all orders sent to a port on an exchange.[885] The commenter stated that these changes to CAT resulted from discussions between the Commission and the Participants, that such changes ''significantly increased CAT costs,'' and that Industry Members with ''no voice and little transparency'' into the building of the CAT system would be allocated most of the increased CAT costs.[886] The commenter stated that the Commission approval of a funding proposal for a system that is not consistent with Rule 613 and the CAT NMS Plan would be arbitrary and capricious action.[887]

Another commenter stated that some of the drivers of CAT costs are the addition of various new system features and reporting requirements that were established as the result of discussion between Commission staff and the CAT Operating Committee.[888] The commenter stated that some of these requirements have been driven by ''informal reinterpretations'' of the Plan and have resulted in material changes to the CAT without proper weighing of costs and benefits associated with such changes.[889] The commenter further stated that the Participants should confirm that the existing CAT system meets the requirements of the Plan, before the funding proposal is finalized.[890]

One commenter believes that the Commission should require an amendment to the CAT NMS Plan for new reporting requirements or enhancements for which costs and benefits were never considered by Commission in the economic analysis for the approval of the CAT NMS Plan.[891] This commenter believes that the Commission is imposing CAT processing requirements that are not required by Rule 613 and the CAT NMS Plan.[892] The commenter further believes these ''changes'' should be subject to greater review by the Industry Members and the public at large, and therefore

[865] *Id.* at 4–5.

[866] *See* Citadel July Letter at 9–10.

[867] *Id.* at 6.

[868] *See* MMI July Letter at 2; SIFMA June 2023 Letter at 4.

[869] *See* CAT LLC July 2023 Response Letter at 26–27.

[870] *Id.* at 28.

[871] *Id.* at 27–28.

[872] *Id.* at 28.

[873] *See* CAT Industry Webinar: CAT Costs (Sept. 21, 2021), *available at https://catnmsplan.com/sites/default/files/2021-09/09.21.21-CAT-Costs_0.pdf;* CAT Industry Webinar: Fee Models (Sept. 22, 2021), *available at https://catnmsplan.com/sites/default/files/2021-09/09.22.21-CAT-Fee-Model.pdf.*

[874] *See, e.g., supra* note 58; *see also https://www.sec.gov/comments/4-698/4-698-a.htm.*

[875] SIFMA May 2023 Letter at 2.

[876] *See* CAT LLC May 2023 Response Letter at 12.

[877] *Id.*

[878] *See* SIFMA June 2023 Letter at 2, 6–7; Citadel July Letter at 5; FIA Letter at 5; FIF and SIFMA Letter at 4, 5, 8–23.

[879] *See* SIFMA Letter June 2023 at 6.

[880] *Id.* at 6–7.

[881] *Id.* at 6.

[882] *Id.* at 6–7.

[883] *Id.* at 7.

[884] *See* SIFMA June 2023 Letter at 6.

[885] *Id. See also* Citadel July Letter at 32–33.

[886] *See* SIFMA June 2023 Letter at 7.

[887] *Id.*

[888] *See* FIA Letter at 5.

[889] *Id.*

[890] *Id.*

[891] *See* FIF and SIFMA Letter at 4, 5.

[892] *Id.* at 9–12 (discussing various ''processing changes'' the commenter believes the Commission intends to impose, as well as summarizing the objections made by the Participants to these ''changes'').

should be filed as amendments to the CAT NMS Plan, thereby requiring a cost-benefit analysis to be conducted by the Commission and public disclosure.[893] The commenter stated that the Commission has mandated additional reporting requirements for CAT that the commenter does not believe to be within the scope of Rule 613 and the CAT NMS Plan, and that these additional reporting requirements should be subject to an appropriate cost-benefit analysis.[894] The commenter stated their concern that these reporting requirements would be very costly to implement and questioned whether the surveillance value of these additional reporting requirements justified the additional costs that will be imposed on market participants (and potentially passed through to customers).[895] The commenter further stated that, to the extent that these additional reporting requirements are found to be within the scope of Rule 613 and the CAT NMS Plan, the Commission should grant exemptive relief with respect to these requirements because of the additional costs.[896] The commenter also stated that if the Commission does not grant exemptive relief, then the Commission should require an amendment to the CAT NMS Plan, that sets forth the costs and benefits, for each of these additional reporting requirements because the commenter believes that these reporting requirements were not considered as part of the cost estimates in the CAT NMS Plan.[897]

Another commenter stated that changes and cost overruns have changed the structure of the CAT from what was contemplated by Rule 613.[898] The commenter believes that the Operating Committee and the Commission have engaged in ad-hoc discussions to interpret what the Plan requires ''without adequate notice to Industry Members or due consideration of the costs and benefits associated with such interpretations.'' [899] The commenter stated that the Commission has not regularly assessed whether costs resulting from a specific interpretation of Rule 613 and the CAT NMS Plan outweigh benefits.[900] The commenter requested that the Commission revisit its assumptions from the CAT NMS Plan Approval Order [901] due to inaccurate cost estimates, a failure to retire duplicative systems, impracticality of technology requirements, a lack of effective governance, and a lack of processes to consider requests to add more data.[902]

The commenter also stated that the Commission must update the economic analysis from the CAT NMS Plan Approval Order [903] to revise its estimates of costs to build and operate CAT using actual costs incurred,[904] to project average annual increases in the CAT operating budget,[905] and to update its analysis of CAT-related costs to be borne by Industry Members.[906] The commenter stated that the 2016 CAT NMS Plan lacked a funding model, so the Commission did not consider the implications of allocating costs to Industry Members to build and operate the CAT.[907] The commenter stated that the Proposed Amendment would allocate at least 78% and up to 100% of costs to Industry Members and a small group of Industry Members will pay the majority of these costs (and potentially both historical and ongoing costs simultaneously).[908] The commenter stated that the proposed allocation would have ''dramatic effects'' on market efficiency, competition and capital formation,[909] stating that ''[t]he allocation methodology will have a direct and negative impact on market efficiency, competition, and capital formation, and the Commission must comprehensively assess those impacts before approving this filing.'' [910]

Additionally, the commenter stated that Rule 613 requires the Participants to provide an estimate of the costs associated with creating, implementing and maintaining the CAT, the costs, benefits and rationale for the choices made in developing the CAT NMS Plan, and their own analysis of the plan's impact on competition, efficiency and capital formation.[911] The commenter requested the Commission to require the members of the Operating Committee to update the analysis required by Rule 613 in light of a ''massive increase'' in costs since 2016.[912] Another commenter similarly suggested that additional oversight and public review of the actual costs and purpose of the CAT is called for, and also requested additional transparency on the status of legacy reporting systems, since their retirement could offset some of the CAT fees.[913]

In response to one commenter that stated that Rule 613 and the CAT NMS Plan no longer reflect the operation of the CAT,[914] CAT LLC stated that the CAT was implemented in accordance with Rule 613 and the CAT NMS Plan and that the CAT NMS Plan permits the recovery of costs incurred in the creation, implementation and maintenance of the CAT.[915]

CAT LLC also responded to comments that raised concerns about the Commission's interpretations of CAT NMS Plan requirements that were not related to the funding model and the costs and benefits of those interpretations.[916] CAT LLC stated that the Proposed Amendment is not the appropriate forum to resolve interpretive questions.[917] CAT LLC also stated that, for proposed changes to the CAT NMS Plan, the Participants are following the process in Rule 608 for plan amendments and noted that material changes to the CAT system would require an amendment to the CAT NMS Plan,[918] but not a material change to a technology contract as the CAT NMS Plan permits the Operating

[893] *Id.* at 10–11. This commenter also stated that there were several ''processing requirements'' that could reduce CAT operating costs and that the Commission should direct the Participants to analyze these ''processing requirements'' and make that analysis available to the public for discussion. *Id.* at 12–13.

[894] *See* FIF and SIFMA Letter at 13–23 (discussing various reporting requirements that the commenter does not consider to be within the scope of Rule 613 and the CAT NMS Plan or believes that exemptive relief should be granted because of the costs for implementing these requirements, including: requiring CAT reporting of verbal (unstructured) activity; requiring CAT reporting of non-executable RFQ responses; requiring CAT reporting of request messages; requiring that an order recipient report rejections to CAT; requiring an order sender to report venue (order recipient) port settings; requiring CAT reporting of linkage of representative to customer orders and linkage of order fulfillments to representative and principal orders; various requirements with respect to CAIS reporting; and other CAT reporting requirements relating to quoting activity on the OTC Link ATS operated by OTC Markets).

[895] *Id.* at 14.

[896] *Id.*

[897] *Id.*

[898] *See* Citadel July Letter at 7.

[899] *Id.* at 6.

[900] *Id.*

[901] *See supra* note 2.

[902] *See* Citadel July Letter at 5; *see also* FIF and SIFMA Letter at 24–26.

[903] *See* CAT NMS Plan Approval Order, *supra* note 2.

[904] *See* Citadel July Letter at 12. The commenter stated that 2016 figures underestimated such implementation costs for larger broker-dealers by assuming cost savings would be realized through retirement of other reporting systems which haven't been retired yet. *Id.* at 12–13.

[905] *Id.* at 13.

[906] *Id.* at 12.

[907] *Id.*

[908] *See* Citadel July Letter at 12; *id.* at 12, n.57.

[909] *Id.* at 12.

[910] *Id.* at 15.

[911] *Id.* at 14–15; *see also* FIF and SIFMA Letter at 24–25.

[912] *See* Citadel July Letter at 15.

[913] *See* MMI July Letter at 6. This commenter did not specifically request that the Operating Committee update the Rule 613 analysis.

[914] *See* SIFMA June 2023 Letter at 7.

[915] *See* CAT LLC July 2023 Response Letter at 28.

[916] *See* Citadel July Letter at 32–34; FIA Letter at 3, 4; MMI July Letter at 4.

[917] *See* CAT LLC July 2023 Response Letter at 29.

[918] *Id.*

Committee to enter into, modify or terminate a material contract.[919]

The CAT NMS Plan is consistent with Rule 613 and we do not believe that any changes have been made that are inconsistent with the Plan as approved in 2016, as amended in 2020.[920] The examples provided by commenters of changes to the CAT requested by the Commission,[921] in the Commission's view, were included in the CAT NMS Plan approved by the Commission in 2016.[922] Rule 608 and Rule 613 of Regulation NMS provide advance notice of material changes to the CAT system and related costs by requiring changes to the CAT NMS Plan to be filed with the Commission as an NMS plan amendment pursuant to Rule 608 of Regulation NMS and thereby be subject to notice and comment, and require that the Commission consider, in determining to approve the amendment, the impact of the amendment on efficiency, competition and capital formation.[923] Section 6.9 of the CAT NMS Plan does not provide unfettered discretion to the CAT Operating Committee to make Material Amendments to the CAT system. If the CAT Operating Committee or the Commission wish to impose additional requirements to the CAT NMS Plan, such requirements must be proposed through an amendment to the CAT NMS Plan, filed under Rule 608 of Regulation NMS. Such amendments must be published for notice and comment.[924] Additionally, Rule 613(a)(5) of Regulation NMS [925] requires the Commission to consider, in determining whether to approve an amendment to the CAT NMS Plan, the impact of the amendment on efficiency, competition and capital formation; therefore, this Order contains an analysis of the Proposed Amendment's impact on efficiency, competition, and capital formation.

d. Funding in the Appropriation Process

Certain commenters believe that funding for the CAT should be accomplished through Congressional appropriations.[926] These commenters characterized the CAT as a Commission tool for law enforcement.[927] One commenter stated that the Proposed Amendment would ''evade'' [928] the separation of powers established by the Constitution, arguing that since the CAT is a ''Commission system used for enforcement'' [929] and that law enforcement ''is an executive prerogative,'' [930] Congress must approve public funds to build the CAT through the appropriations process.[931] The commenter stated ''[t]he Constitution does not permit the Commission to fund its *own* enforcement apparatus through the backdoor—to require the SROs to raise and spend hundreds of millions of dollars to build a new law enforcement tool for the Commission.'' [932] The commenter also stated that the assessment of ''retroactive liability for monies spent that private parties had no control over'' for public purposes would violate the Fifth Amendment Takings Clause.[933]

Another commenter stated that the Proposed Amendment is unconstitutional because it would require Industry Members to provide the Operating Committee with a blank check to fund 100% of costs in perpetuity for a law enforcement tool designed for the Commission that has not been authorized by Congress.[934] The commenter also stated that requiring the Participants to build ''a multi-billion dollar enforcement tool'' is beyond the scope of Section 11A's authorization to the Commission to require SROs to act jointly or facilitate the development of a national market system.[935] Another commenter stated that the Commission has directed the development of CAT to supplement the government's surveillance program while the Funding Proposal effectively places all or most of the costs of the CAT on the Industry Members, who have no voice in its control or development.[936] The commenter states that these costs are essentially a tax on the industry from an agency and should require Congressional oversight.[937] Additionally, one commenter suggested the treatment of the CAT budget in terms of accounting and transparency as a Commission system, and a cap on the budget for CAT which, if exceeded, would trigger Congressional budget oversight.[938]

In response to recent comments expressing concern that the Industry Member allocation would raise constitutional issues,[939] CAT LLC stated that the first commenter to raise this issue had never once before challenged the constitutionality of Rule 613 or the CAT NMS Plan.[940] CAT LLC stated ''SIFMA's strategic decision to inundate the Commission with these arguments—which directly contradict its prior statements that industry contributions are 'justifiable under the Exchange Act'—just two days before a scheduled SEC Open Meeting to consider the Funding Proposal suggests their ultimate strategy is to delay the Commission's review and approval of any funding model that would require the industry to contribute to the funding of the CAT.'' [941] CAT LLC urged the Commission to not let the commenter further delay a decision on the Proposed Amendment by filing comments that it could have submitted years before.[942] CAT LLC also noted that, despite the commenter's argument that requiring Industry Members to contribute to CAT costs was a constitutional takings problem, the commenter had suggested a funding model for the CAT based on a 50%-50% allocation of costs divided among Participants and Industry

[919] *Id.* at 30 (citing to Section 4.3 of the CAT NMS Plan).

[920] *See* Securities Exchange Act Release No. 89387 (July 24, 2020), 85 FR 45941 (July 30, 2020); Financial Accountability Amendments, *supra* note 18.

[921] *See* SIFMA June 2023 Letter at 6, 7, *supra* notes 881–885 and accompanying text; Citadel July Letter at 33–35; FIF and SIFMA Letter at 8–23. The issues raised by those commenters are either being adjudicated in a separate forum or addressed through a request for exemptive relief. *See* Petition for Review, USCA Case No. 22–1234; Request for Exemption from Certain Provisions of the CAT NMS Plan Related to Reporting of Certain Verbal Activity, Floor and Upstairs Activity, *available at https://catnmsplan.com/sites/default/files/2023-03/03.31.23-CAT-Exemption-Request-Verbal-Floor-and-Upstairs-Activity.pdf.* 22–1234; Request for Exemption from Certain Provisions of the CAT NMS Plan Related to Reporting of Certain Verbal Activity, Floor and Upstairs Activity, *available at https://catnmsplan.com/sites/default/files/2023-03/03.31.23-CAT-Exemption-Request-Verbal-Floor-and-Upstairs-Activity.pdf.*

[922] *See* Securities Exchange Act Release No. 95234 (July 8, 2022), 87 FR 42247 (July 14, 2022).

[923] Rule 613(a)(5). 17 CFR 242.613(a)(5).

[924] *See* Rule 608(a)(1). 17 CFR 242.608(a)(1).

[925] 17 CFR 242.613(a)(5).

[926] *See* SIFMA June 2023 Letter at 8; Citadel July Letter at 28–29; FIA Letter at 3; MMI July Letter at 2–4. *See also* MMI July Letter at 1–2. This commenter suggested evaluating whether the CAT is truly an NMS plan, or if it is better viewed as a Commission system whose budget should be subject to Congressional approval and oversight. In response, CAT LLC stated that this comment is outside the scope of the Proposed Amendment. *See* CAT LLC July 2023 Response Letter at 31, n.144.

[927] *See* SIFMA June 2023 Letter at 8; FIA Letter at 3; Citadel July Letter at 28, 29. *See also* MMI July Letter at 2–4 (categorizing the CAT as a Commission system, required by and dictated by the Commission that should be funded in the same way as other Commission functions).

[928] *See* SIFMA June 2023 Letter at 8.

[929] *Id. See also* FIA Letter at 3.

[930] *See* SIFMA June 2023 Letter at 8.

[931] *Id.*

[932] *Id. See also* Citadel July Letter at 28, 29.

[933] *See* SIFMA June 2023 Letter at 8.

[934] *See* Citadel July Letter at 29.

[935] *Id.* at 28.

[936] *See* FIA Letter at 3.

[937] *Id.*

[938] *See* MMI July Letter at 2, 4.

[939] *See* SIFMA June 2023 Letter at 7–9; Citadel July Letter at 28–29; FIA Letter at 3; Virtu Letter at 2.

[940] *See* CAT LLC July 2023 Response Letter at 31.

[941] *Id.* at 32.

[942] *Id.* at 33.

Members.[943] CAT LLC stated that regardless of how this issue is resolved, the Participants should be able to recover their investment in CAT because Rule 613 and the CAT NMS Plan contemplate Industry Member contributions to CAT funding.[944]

In characterizing CAT as solely a ''*Commission* tool used for enforcement,'' these comments misunderstand its purposes.[945] CAT serves multiple regulatory purposes for both SROs and the Commission. SROs have long had audit trail systems and the SROs themselves, as well as the Commission, have long used the market data from those systems to oversee the securities markets and fulfill their responsibilities under federal securities laws.[946] In directing the SROs to file an NMS plan establishing the CAT, the Commission sought to address shortcomings in those existing systems and create an audit trail system that would provide both the SROs and the Commission with timely access to a comprehensive set of trading data sufficient to oversee modern markets. And in approving the CAT NMS Plan, the Commission determined that the Plan would substantially improve the ability of *both* the SROs and the Commission to perform these regulatory activities to the benefit of investors and markets.[947]

In this respect, the CAT's regulatory and enforcement utility to the SROs as well as the Commission is similar to many of the SROs' other self-regulatory functions that are funded in part by Industry Members. And this dual purpose is consistent with the long history of SRO and Commission oversight of the securities markets. Self-regulation in the securities industry predates the securities laws and, in enacting the Exchange Act in 1934, Congress formalized this structure, purposefully determining to rely on self-regulation as a fundamental component of U.S. market and broker-dealer regulation.[948] Among other things, Congress determined that effectively regulating the inner-workings of the securities industry at the federal level was cost prohibitive and inefficient.[949] And industry participants preferred the less invasive regulation by their peers to direct government regulation.[950] Congress and the Commission have repeatedly reaffirmed that decision in the years since.[951] And Courts have repeatedly affirmed the constitutionality of this system of self-regulation.[952] As contemplated by Congress, the SROs have also long funded their frontline responsibility to supervise their members' compliance with their own rules and the federal securities laws, subject to Commission oversight, through fees on those members.[953] The participation of Industry Members in the funding of CAT is no different.

The assertion by commenters that the funding of the CAT violates the Appropriations Clause or other constitutional limitations thus lacks merit. The funding of an initiative, such as CAT, that has utility to both the SROs and the Commission does not implicate the Appropriations Clause in the manner that has been questioned in courts.[954] As the Supreme Court has stated, that clause ''means simply that no money can be paid out of the Treasury unless it has been appropriated by an act of Congress.'' [955] The use of SRO and Industry Member funding for a self-regulatory initiative—which, as discussed below, falls within the authority provided by Congress—does not transgress that principle.

Nor does Industry Members' participation in CAT funding implicate the Takings Clause. In choosing to participate in the securities industry, Industry Members could not have had any ''distinct investment-backed expectations'' [956] that they would not have to share in funding regulatory initiatives such as development and maintenance of a consolidated audit trail for tracking securities trading, the purpose of which is to ''strengthen the integrity and efficiency of the markets'' and thus ''enhance investor protection and increase capital formation.'' [957]

Finally, the creation of CAT falls within the Commission's authority under the Exchange Act.[958] Pursuant to that Act, each national securities exchange and national securities association must be organized and have the capacity to comply, and enforce compliance by its members, with its rules, and with the federal securities laws, rules, and regulations.[959] And, among other things, the Commission has a responsibility to oversee those organizations and to enforce compliance by the members of exchanges and associations with the respective exchange's or association's rules, and the federal securities laws and regulations.[960] Congress has also charged the Commission with ''insur[ing] the maintenance of fair and

[943] *Id.* at 31. *See also* SIFMA May 2023 Letter at 2; *supra* note 101 and accompanying text.

[944] *See* CAT LLC July 2023 Response Letter at 33.

[945] *See* SIFMA June 2023 Letter at 8; FIA Letter at 3; Citadel July Letter at 28, 29. *See also* MMI July Letter at 2–4 (categorizing the CAT as a Commission system, required by and dictated by the Commission that should be funded in the same way as other Commission functions).

[946] *See* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012) (''CAT Adopting Release'') at 45727.

[947] *See* CAT NMS Plan Approval Order, *supra* note 2, 81 FR at 84727, 84800.

[948] *See* Securities Exchange Act Release No. 50700 (Nov. 18, 2004), 69 FR 71255 (Dec. 8, 2004) (''Concept Release Concerning Self-Regulation'').

[949] *Id.,* citing S. Rep. No. 1455, 73d Cong., 2d Sess. (1934); H.R. Doc. No. 1383, 73d Cong., 2d Sess. (1934); S. Rep. No. 1455, 73d Cong., 2d Sess. (1934).; *see also* S. Rep. No. 94–75, 94th Cong., 1st Sess. 7, II (1975) (stating that a principal reason for retaining a self-regulatory regime was the ''sheer ineffectiveness of attempting to assure [regulation] directly through the government on a wide scale'')

[950] *See* Concept Release on Self-Regulation, *supra* note 948, 69 FR at 71256–57.

[951] *See e.g.,* Exchange Act Amendments of 1975, Pubic Law 29, 89 Stat. 97 (1975); 1961–1963 Special Study of Securities Markets. Securities and Exchange Commission, Report of Special Study of Securities Markets, (''Special Study''), H.R. Doc. No. 95, 88th Cong., 1st Sess. (1963) and Market 2000: An Examination of Current Equity Market Developments, Division of Market Regulation, U.S. Securities and Exchange Commission (January 1994) (''Market 2000 Report'').

[952] *See Todd & Co.* v. *SEC,* 557 F.2d 1008, 1012–13 (3d Cir. 1977); *First Jersey Sec., Inc.* v. *Bergen,* 605 F.2d 690, 697 (3d Cir. 1979); *Sorrell* v. *SEC,* 679 F.2d 1323, 1325–26 (9th Cir. 1982); *R.H. Johnson & Co.* v. *SEC,* 198 F.2d 690, 695 (2d Cir. 1952); *see generally Oklahoma* v. *United States,* 62 F.4th 221, 229 (6th Cir. 2023).

[953] *See* Concept Release Concerning Self-Regulation, *supra* note 948, 69 FR at 71268–69, *citing* Exchange Act Section 6(b)(4), 15 U.S.C. 78f(b)(4); Exchange Act Section 15A(b)(5), 15 U.S.C. 78o–3(b)(5); Exchange Act Section 15A(b)(2) and 6(b)(1) 15 U.S.C. 78o–3(b)(2) and 78f(b)(1).]

[954] For these reasons, we disagree with the assertion of commenters that the Fifth Circuit's reasoning in *Cmty. Fin. Servs. Ass'n of Am., Ltd.* v. *CFPB,* 51 F.4th 616, 642 (5th Cir. 2022), cert. granted sub nom. *CFPB* v. *Com. Fin. Servs. Ass'n,* U.S. (Feb. 27, 2023), casts doubt on the constitutionality of CAT. The holding in that case rested on the court's view that the CFPB's ''perpetual self-directed, double-insulated funding structure'' was ''unprecedented'' for an agency that ''wields vast rulemaking, enforcement, and adjudicatory authority.'' *See also CFPB* v. *Law Offices of Crystal Maroney,* 63 F.4th174, 181–83 (2d. Cir. 2023) (disagreeing with Fifth Circuit's reasoning and rejecting challenge to CFPB's funding structure).

[955] *See Cincinnati Soap Co.* v. *United States,* 301 U.S. 308, 321 (1937); *see also Off. Of Pers. Mgmt.* v. *Richmond,* 496 U.S. 414, 424 (1990) (The Appropriations Clause requires that ''the payment of money from the Treasury must be authorized by a statute.'').

[956] *See Penn Central Transp. Co.* v. *New York City,* 438 U.S. 104, 124 (1978).

[957] *See* CAT NMS Plan Approval Order, *supra* note 2, 81 FR at 84727.

[958] *See* 15 U.S.C. 78b, 78c(b), 78e, 78f, 78k–1, 78o, 78o–3; *cf. Nasdaq Stock Mkt. LLC* v. *SEC,* 38 F.4th 1126, 1131 (D.C. Cir. 2022) (explaining that Congress granted the Commission '' 'broad, discretionary powers' to ensure 'maximum flexibility' in 'oversee[ing] the development of a national market system' and 'implement[ing] its specific components in accordance with the findings and . . . objectives' of the legislation,'' quoting S. Rep. 94–75, at 7 (1975)).

[959] *See, e.g.,* Sections 6(b)(1), 19(g)(1) and 15A(b)(2) of the Exchange Act, 15 U.S.C. 78f(b)(1), 78s(g)(1), and 78o–3(b)(2).

[960] *See, e.g.,* Sections 2, 6(b), 15A(b), and 19(h)(1) of the Exchange Act, 15 U.S.C. 78b, 15 U.S.C. 78f(b), 15 U.S.C. 78o–3(b), and 15 U.S.C. 78s(h)(1).

honest markets,'' removing ''impediments to'' and perfecting ''the mechanisms of a national market system for securities'' and ''provid[ing] for regulation and control of'' transactions on securities exchanges and the over-the-counter market.[961] In furtherance of these responsibilities, Congress authorized the Commission to ''impose requirements necessary to make such regulation and control reasonably complete and effective'' [962] as well as to make such rules and regulations ''as may be necessary or appropriate to implement the provisions'' of the Exchange Act.[963]

More recently, Congress also directed the Commission to facilitate the establishment of a national market system in accordance with specified findings and objectives.[964] The initial Congressional findings were that the securities markets are an important national asset that must be preserved and strengthened, and that new data processing and communications techniques create the opportunity for more efficient and effective market operations.[965] Congress then proceeded to mandate a national market system composed of multiple competing markets that are linked through technology, directing the Commission to ''use its authority under [the Exchange Act] to facilitate the establishment of a national market system,'' including ''by rule'' ''to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under [the Exchange Act] in planning, developing, operating, or regulation a national market system.'' [966]

The creation of the CAT was an appropriate exercise of this authority. The Commission's task pursuant to the mandate in Section 11A has been to facilitate an appropriately balanced market structure that promotes competition among markets, while minimizing the potentially adverse effects of fragmentation. An appropriately balanced market structure also must provide for strong investor protection.[967] As the Commission explained in adopting Rule 613, the creation of a consolidated audit trail with the ability to surveil cross-market activity had become key to the ability of both the SROs and the Commission to perform many of their core regulatory functions in the modern iteration of the national market system.[968] While the SROs and the Commission relied on existing audit trails and data in fulfilling their regulatory responsibilities prior to CAT, each of those systems had its own flaws and drawbacks, and there was a significant disparity in the audit trail requirements among the exchanges and FINRA. At the same time, the rapid change to fast, electronic markets on which trading was dispersed across market centers gave rise to an increasing need to a more uniform audit trail with cross-market compatibility.[969] The establishment of the CAT thus enabled the SROs and the Commission to more efficiently and effectively perform their respective regulatory responsibilities, including to analyze and reconstruct market events, monitor market behavior, conduct market analysis to support regulatory decisions, and perform surveillance, investigation, and enforcement activities.[970]

Contrary to one commenter's suggestion, the Supreme Court's major questions doctrine is not implicated here. In directing the SROs to act jointly to create an accurate, complete, accessible and timely audit trail to replace these existing audit trails, the Commission did not claim an ''[e]xtraordinary grant[ ] of regulatory authority'' based on ''vague,'' ''cryptic,'' ''ancillary,'' or ''modest'' statutory language.[971] Nor did it assert authority that falls outside its ''particular domain.'' [972] And, while CAT is undoubtedly a large database, that is a function of the size of the ''complex, dispersed, and highly automated national market system'' [973] Congress expressly charged the SROs and the Commission with overseeing. As detailed above, the collection of securities transaction data by the SROs and the Commission is an important factor in enabling both to fulfill their statutory responsibilities and has a long history. There is no reason to question that Congress would have intended for the Commission to address the serious shortcomings and regulatory obstacles associated with the lack of a consolidated audit trail. And there is therefore no basis for dispensing with ordinary principles of statutory construction to require express authorization for CAT by Congress.[974]

e. Rule 608 and Rule 19b–4

Certain commenters believe the assessment of CAT fees on Industry Members through filings submitted by each exchange under Rule 19b–4 is likely inconsistent with Rule 608.[975] One commenter stated that the Commission amended Rule 608 in 2020 to remove the effective-upon-filing procedure for NMS plan fees by requiring that NMS plan fees be subject to notice and comment and Commission approval prior to becoming effective.[976] The commenter also stated that the 2020 amendment specifically contemplates that CAT fees would be subject to Rule 608,[977] however the Commission was considering approving a process for CAT fees that would not permit a meaningful review opportunity, contrary to the Rule 608 amendment.[978] The commenter acknowledged that the CAT NMS Plan provides for Section 19(b) fee filings but also stated that (1) the CAT NMS Plan was approved prior to the amendment of Rule 608 in 2020 and (2) the CAT NMS Plan is silent about whether Section 19(b) fee filings would need to be made after the Operating Committee receives approval to assess the fees under Rule 608.[979] The commenter suggested that due to the ''infirmities with the process for establishing and assessing CAT Fees

[961] *See* Section 2 of the Exchange Act, 15 U.S.C. 78b.

[962] *Id.*

[963] Section 23(a)(1) of the Exchange Act.

[964] Section 11A of the Exchange Act, 15 U.S.C. 78k–1.

[965] 15 U.S.C. 78k–1(a)(1).

[966] 15 U.S.C. 78k–1(a)(3)(B).

[967] *See* Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) at 3597.

[968] *See* CAT Adopting Release, *supra* note 946. Indeed, many SROs, in commenting on that rule, recognized the essential nature of the project. *Id.* at 45736, *quoting* Letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, and Janet McGinness Kissane, Senior Vice President and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated August 9, 2010 (''the evolution of the U.S. equity markets and the technological advancements that have recently taken place have created an environment where a consolidated audit trail is now essential to ensuring the proper surveillance of the securities markets and maintaining the confidence of investors in those markets.'').

[969] *See* Securities Exchange Act Release No. 62174 (May 26, 2010), 75 FR 32556 (June 8, 2010) (''CAT Proposing Release''). Even prior to proposing the creation of the CAT in 2010, the Commission had twice requested comment regarding how best to enhance the capability of SROs and the Commission to effectively and efficiently conduct cross-market supervision of trading activity. *See* Securities Exchange Act Release No. 47849 (May 14, 2003), 68 FR 27722 (May 20, 2003) (File No. S7–11–03) (''Intermarket Trading Concept Release'') and Concept Release Concerning Self-Regulation.

[970] *See* CAT Adopting Release, *supra* note 946, 77 FR at 45727; *see also* CAT NMS Plan Approval Order, *supra* note 2, 81 FR at 84727, 84738, 84800.

[971] *West Virginia* v. *EPA,* 142 S. Ct. 2587, 2608–10 (2022) (quotation omitted).

[972] *Alabama Ass'n of Realtors* v. *HHS,* 141 S. Ct. 2485, 2489 (2021) (per curiam).

[973] *See* CAT Adopting Release, *supra* note 946, 77 FR at 45723.

[974] *Contra Biden* v. *Nebraska,* 143 S. Ct. 2355, 2372, 2375 (2023), 143 S.Ct. 2355, 2372, 2375 (2023).

[975] *See* SIFMA June 2023 Letter at 4, 9; Citadel July Letter at 15.

[976] *See* SIFMA June 2023 Letter at 9.

[977] *Id.*

[978] *Id.*

[979] *Id.* at 9, n.45.

under the Funding Proposal,'' the Operating Committee must create a new funding process consistent with Rule 608 and stated that the Commission cannot find that the Proposed Amendment is consistent with the Exchange Act.[980] Another commenter stated that the proposed approach seems inconsistent with recent Commission rulemaking to ensure that fee filings related to an NMS plan can no longer be effective upon filing.[981]

In response to one commenter that stated that the filing of Industry Member CAT fees under Rule 19b–4 likely violates Rule 608 of Regulation NMS,[982] CAT LLC stated that it disagreed with the comment because the Proposed Amendment complies with Rule 608.[983] CAT LLC stated that Section 11.1(b) of the CAT NMS Plan requires the Participants to file Industry Member CAT fees pursuant to Section 19(b) of the Exchange Act,[984] and Section 19(b) permits fees to become effective upon filing.[985] CAT LLC also noted that the funding methodology for Participant fees would be established through the Proposed Amendment, which was filed in accordance with Rule 608; therefore, Participant CAT fees would be adopted in accordance with Rule 608.[986] CAT LLC stated that Industry Member CAT fees would be filed pursuant to Rule 19b–4 and those filings would be based on the Proposed Amendment, which would have to be approved pursuant to Rule 608, therefore ''any Industry Member CAT fees will have been subject to the same extensive notice and comment process as Participant CAT fees and must satisfy the requirements of the Exchange Act.'' [987]

The Commission disagrees with the commenters' position. The filing of Industry Member CAT fees under Rule 19b–4 is consistent with the structure of the CAT. The CAT NMS Plan functions as a joint agreement amongst the SROs who are parties to the CAT NMS Plan. But Industry Members are not parties to the Plan and the Plan itself does not bind Industry Members. Rather, Rule 608(c) of Regulation NMS requires each SRO to enforce compliance by its members with an effective NMS plan of which it is a sponsor or a participant.[988] Additionally, Rule 613(g) requires: (1) each SRO plan sponsor to file a proposed rule change to require its members to comply with Rule 613 and the CAT NMS Plan pursuant to Section 19(b)(2) of the Exchange Act and Rule 19b–4 thereunder; [989] (2) each member of an SRO plan sponsor to comply with the CAT NMS Plan; [990] (3) each SRO plan sponsor to agree to enforce compliance by its members with the CAT NMS Plan; [991] and (4) the CAT NMS Plan to include a mechanism to ensure compliance with the CAT NMS Plan.[992] Thus, Industry Members' CAT reporting requirements stem from rules the Participants put in place for their members pursuant to the Section 19(b)(2) rule filing process.[993]

The amendments to Rule 608 (''Rescission of Effective-Upon-Filing Procedure for NMS Plan Fee Amendments''), among other things, rescinded Rule 608(b)(3)(i),[994] a provision that permitted fee changes assessed under NMS plans to become effective-upon-filing, and required NMS Plan fee amendments to be filed pursuant to Rule 608(b)(1) and (2), thus mandating an opportunity for public comment and Commission approval by order before the effectiveness of such fees.[995] Vendors and subscribers of market data under the Market Data Plans are subject to vendor or subscribers' fees charged by the applicable NMS Plan and filed by the NMS Plan using Rule 608. As these vendors and subscribers are not parties to the NMS Plans, the mechanism by which fees are imposed on them is contractual. Specifically, in order to receive market data under the NMS Plans, vendors and subscribers must individually enter into a vendor and/or a subscription agreement under which they agree to pay fees.[996] The rescission impacted the way the Commission considers fees imposed on vendors and subscribers of market data under Market Data Plans since their fees are filed by the NMS Plans pursuant to Rule 608.

In contrast, all Industry Members who are CAT Reporters are members of at least one Participant. Industry Members are bound by the rules of the Participant(s) of which they are members. The process for adopting rules of a Participant that affect their members is through the Section 19(b) rule filing process, which includes the ability to adopt immediately-effective fees.[997] Additionally, fees filed by the Section 19(b) rule filing process are still subject to public notice and comment, and the Commission may suspend and institute proceedings on these filings.[998] For these reasons, the Commission does not believe that the Rescission of Effective-Upon-Filing Procedure for NMS Plan Fee Amendments impacts the CAT NMS Plan provisions relating to how Industry Member fees are filed with the Commission.

f. Governance

One commenter stated that the CAT governance structure is flawed because exchange groups with multiple affiliated exchanges have ''significant influence'' over the Operating Committee and can ''dictate many CAT-related decisions'' such as the allocation of CAT costs.[999] The commenter further stated that Industry Members lack representation on the Operating Committee; therefore, they cannot vote on the design, implementation or funding of the CAT.[1000] The commenter stated that the governance structure results in the allocation of all CAT costs to Industry Members.[1001] Additionally, the commenter believes the governance structure permits the Operating Committee to provide minimal information on the costs to be allocated to Industry Members,[1002] stating that the financial information that has been provided by the Operating Committee through audited financial statements and an annual financial and operating budget is disclosed in broad categories and lacks detail about the key drivers of the costs, and that the annual financial and operating budget does not predict costs accurately.[1003] Based on this lack of detail, the commenter stated that market participants cannot assess

[980] *Id.*

[981] *See* Citadel July Letter at 15.

[982] *See* SIFMA June 2023 Letter at 9.

[983] *See* CAT LLC July 2023 Response Letter at 30.

[984] *Id.*

[985] *Id.*

[986] *Id.* at 31.

[987] *Id.*

[988] 17 CFR 242.608(c). *See also* CAT NMS Plan at Section 3.11 (requiring each Participant to comply with and enforce compliance, as required by Rule 608(c), by its Industry Members with the provisions of Rule 613 and the CAT NMS Plan).

[989] 17 CFR 242.613(g)(1).

[990] 17 CFR 242.613(g)(2).

[991] 17 CFR 242.613(g)(3).

[992] 17 CFR 242.613(g)(4).

[993] *See* Securities Exchange Act Release No. 80256 (Mar. 15, 2017), 82 FR 14526 (Mar. 21, 2017).

[994] 17 CFR 242.608(b)(3)(i).

[995] *See* Securities Exchange Act Release No. 89618 (Aug. 19, 2020), 85 FR 65470, 65471 (Oct. 15, 2020).

[996] *See, e.g.,* UTP Plan Subscriber Agreement, *available at https://www.utpplan.com/DOC/subagreement.pdf;* Second Restatement of the Plan Submitted to the Securities and Exchange Commission Pursuant to Rule 11Aa3–1 under the Securities Exchange Act of 1934, composite as of June 3, 2021, *available at https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/110000358917/CTA%20Plan%20-%20Composite%20as%20of%20June%203,%202021.pdf,* at Exhibit C (Form of Vendor Contract); at Exhibit D (Form of Subscriber Contracts).

[997] 15 U.S.C. 78s(b)(3)(A).

[998] *Id. See also* 17 CFR 240.19b–4(f)(2). *See also supra* notes 192–196 and accompanying text.

[999] *See* Citadel July Letter at 5, 6.

[1000] *Id.* at 6.

[1001] *See id.*

[1002] *Id.*

[1003] *Id.* at 6–7; *id.* at n.14.

whether total CAT costs are reasonable and cannot suggest cost-saving alternatives and must rely on the Operating Committee to contain the budget.[1004] The commenter stated, ''[i]t is clearly inequitable to compel Industry Members to provide a blank check to fund these spiraling costs in perpetuity, without any governance role or any plan to contain overall costs,'' [1005] and that allocating all CAT costs to firms without representation ''marginalize[s] cost-related considerations.'' [1006] The commenter also stated that the governance structure does not require the Operating Committee or the Commission to assess whether the costs of a specific interpretation of the Plan outweigh any benefits.[1007]

The commenter recommended the following enhancements to improve CAT governance: (1) each exchange group and national securities association should have one vote on the Operating Committee, but will have a second vote if ''the exchange group or national securities association has a market center or centers that trade more than 15 percent of consolidated equity and options market share;'' [1008] (2) all actions related to funding by the Operating Committee should be authorized by supermajority vote; [1009] and (3) Industry Members should have voting representation on the Operating Committee commensurate with the costs allocated to them.[1010] The commenter stated that if industry representation cannot be achieved through an NMS plan, the plan is not an appropriate vehicle for CAT governance.[1011]

In response to comments objecting to a lack of Industry Member voting representation on the Operating Committee and suggesting their inclusion based on the proportion of costs allocated to them,[1012] CAT LLC stated that the addition of Industry Member voting representation is not consistent with the Exchange Act.[1013] CAT LLC stated that ''allowing Industry Members to control CAT LLC as the commenters suggest could adversely affect the regulatory objectives of the CAT'' [1014] as Industry Members ''have no statutory obligation to protect investors or to act in the public interest, nor do they have any regulatory obligation to operate the CAT System in a manner that is consistent with the Rule 613 and the CAT NMS Plan.'' [1015] CAT LLC stated that Industry Members can provide input through Plan amendments and fee filings and the CAT Advisory Committee.[1016]

In response to a comment suggesting changes to the allocation of Participant voting rights,[1017] CAT LLC stated that this issue is beyond the scope of the CAT funding model. CAT LLC also responded to the commenter's suggestion that all funding actions by the Operating Committee require a supermajority vote by stating that it disagreed with the suggestion because all Operating Committee actions relate in a way to CAT costs; therefore, imposing a supermajority requirement could undermine governance.[1018]

Regarding SRO and Industry Member voting rights, the Commission does not believe that modification of the voting rights, which the Commission considered when it approved the CAT NMS Plan, is within the scope of the Proposed Amendment.[1019] Furthermore, in response to those comments suggesting the addition of Industry Members as voting members on the operating committee, we note that—in vacating the Order Approving the CT Plan—the D.C. Circuit concluded that the inclusion of non-SRO representation on the operating committee of the CT Plan was inconsistent with Section 11A of the Exchange Act.[1020] Industry Members do have an opportunity to attend meetings of the Operating Committee through the CAT Advisory Committee. According to Section 4.13(d) of the CAT NMS Plan, ''[m]embers of the Advisory Committee shall have the right to attend meetings of the Operating Committee or any Subcommittee, to receive information concerning the operation of the Central Repository (subject to Section 4.13(e)), and to submit their views to the Operating Committee or any Subcommittee on matters pursuant to [the CAT NMS Plan] prior to a decision by the Operating Committee on such matters.[1021]

g. Miscellaneous

Certain commenters urged the Commission to address data security concerns associated with the CAT.[1022] One commenter suggested that the Commission prioritize finalizing the proposed amendments to the CAT NMS Plan to enhance data security.[1023] Commenters also raised concerns that the Commission was considering the Proposed Amendment at the same time it is considering modifying certain Commission rules governing equity market structure.[1024]

One commenter expressed concern that the Commission would approve the Proposed Amendment prematurely without careful consideration.[1025] The commenter also stated that the Commission is ''rushing forward to approve the latest proposal without taking advantage of the allotted time under the Exchange Act for careful consideration'' and ''prematurely moving forward'' while simultaneously considering revisions of the rules governing equity and options market structure and proceeding with other proposals that will impose costs on Industry Members.[1026] The commenter stated that ''[t]he unequitable distribution of CAT costs contemplated by the Funding Proposal will exacerbate these problems, harming the functioning of U.S. securities markets.'' [1027] The

[1004] *See* Citadel July Letter at 7.

[1005] *Id.* at 2. *See also id.* at 23 (stating Section 6(b)(4), Section 6(b)(5) and Section 6(b)(8) of the Exchange Act do not allow a private entity to require Industry Members to provide a blank check in perpetuity because this is not an equitable allocation of reasonable fees and would greatly harm market competition, efficiency and liquidity).

[1006] *Id.* at 7.

[1007] *Id. See also* MMI July Letter at 4 (suggesting ''[i]ncentivization of cost-consciousness and accountability for SEC interpretations and mandates for CAT reporting specifications, interpretations, and usage of CAT.'').

[1008] *See* Citadel July Letter at 34.

[1009] *Id.* at 3, 34.

[1010] *Id. See also* MMI July Letter at 1, 2 (requesting the Commission require Industry Member representation on the Operating Committee before approving any funding proposal, with SIFMA acting as the broker representative); FIA Letter at 4 (stating that the CAT Operating Committee should be reconfigured, with Industry Members comprising the percentage of the Committee equivalent to whatever cost allocation percentage is eventually allocated to them).

[1011] *See* Citadel July Letter at 34. In response, CAT LLC stated that this comment is outside the scope of the Proposed Amendment. *See* CAT LLC July 2023 Response Letter at 31, n.144.

[1012] *See* FIA Letter at 4; Citadel July Letter at 34; MMI July Letter at 2.

[1013] *See* CAT LLC July 2023 Response Letter at 21.

[1014] *Id.*

[1015] *Id.*

[1016] *Id.*

[1017] *See* Citadel July Letter at 34.

[1018] *See* CAT LLC July 2023 Response Letter at 21–22.

[1019] *See* CAT NMS Plan Approval Order, *supra* note 2, 81 FR at 84728–30.

[1020] *See The NASDAQ Stock Market LLC et al.* v. *SEC,* Case No. 21–1167, D.C. Cir. (July 5, 2022). 15 U.S.C. 78k–1.

[1021] *See* CAT NMS Plan, *supra* note 2, at Section 4.13. *See also* 17 CFR 242.613(b)(7).

[1022] *See* Citadel July Letter at 3, 35; SIFMA June 2023 Letter at 2; Virtu Letter at 4.

[1023] *See* Citadel July Letter at 3, 35; *see* Securities Exchange Act Release No. 89632 (Aug. 21, 2020), 85 FR 65990 (Oct. 16, 2020). Two other commenters stated that the Commission has failed to address data security concerns associated with the CAT. *See* SIFMA June 2023 Letter at 2; Virtu Letter at 4.

[1024] *See* SIFMA June 2023 Letter at 3; Citadel July Letter at n.54 and 113; *see* Exchange Act Release Nos. 96496, 88 FR 5440 (Jan. 27, 2023) (Regulation Best Execution); 96495, 88 FR 128 (Jan. 3, 2023) (Order Competition Rule); 96494, 87 FR 80266 (Dec. 29, 2022) (Minimum Pricing Increments); 96493, 88 FR 3786 (Jan. 20, 2023) (Order Execution Information).

[1025] *See* SIFMA June 2023 Letter at 3.

[1026] *Id. See also* Virtu Letter at 4.

[1027] *See* SIFMA June 2023 Letter at 3.

commenter further stated that the Commission cannot determine whether the proposed allocation of costs is equitable without assessing the distribution of costs and benefits under the other pending proposals.[1028]

In response to comments that urged the Commission to prioritize CAT data security concerns,[1029] CAT LLC stated that ''CAT security is of paramount importance, and the CAT System is protected by a comprehensive information security program required by the CAT NMS Plan and overseen by a dedicated CISO, as well as via SEC oversight . . .'' [1030] CAT LLC stated that security concerns should not be used to prevent appropriate funding of the CAT, noting that appropriate funding can help to ensure the security of CAT Data.[1031]

CAT LLC also responded to comments that expressed concern that the Commission was considering the Proposed Amendment while also considering changes to Commission rules governing equity market structure.[1032] CAT LLC stated that the Commission's consideration of its market structure proposals should not impede its decision on the Proposed Amendment, which would ensure appropriate funding of the CAT as these are different decisions.[1033]

In response to the commenter that stated that the Commission would be rushing to approve the Proposed Amendment,[1034] CAT LLC stated that ''the current model results from years of modifications that have been made in significant part in response to industry comments to earlier versions,'' [1035] and that because the current proposal ''differs very little from the immediately preceding funding model,'' commenters had more than 400 days to comment on the substance of the Proposed Amendment.[1036]

The CAT data security issues and the costs and benefits of unrelated pending equity market structure proposals [1037] are beyond the scope of the Proposed Amendment, which is limited to CAT funding. Further, the Commission's ability to consider the proposed amendments to the CAT NMS Plan to enhance data security is not impacted by the Proposed Amendment, as it is a separate proposal and both are being considered in due course.[1038] Given the time between the Prior Funding Model Proposal and the OIP of the Proposed Amendment, the Commission has also had ample time for ''careful consideration'' of the Executed Share Model as the Proposed Amendment's proposed changes to the CAT NMS Plan are closely similar to the changes proposed in the Prior Funding Model Proposal,[1039] as modified by the two partial amendments that were filed, respectively, in November 2022 and February 2023.[1040] Additionally, the time spent for the Commission's review of the Proposed Amendment is consistent with the time permitted by Rule 608(b) for the Commission to approve or disapprove NMS plan amendments,[1041] for both the Prior Funding Model Proposal (for which the Commission extended to 300 days from the date of notice publication the date by which the Commission would conclude proceedings to determine whether to approve or disapprove the Prior Funding Model Proposal),[1042] and this Proposed Amendment.

IV. Efficiency, Competition, and Capital Formation

In determining whether to approve a proposed amendment, and whether such amendment is in the public interest, Rule 613 requires the Commission to consider the potential effects of the proposed amendment on efficiency, competition, and capital formation.[1043] In its analysis, the Commission has reviewed the arguments about such effects put forth by the Participants and commenters and independently analyzed the likely effects of the Proposed Amendment on efficiency, competition, and capital formation.[1044] Several commenters stated that, because CAT costs incurred to date are greater than those estimated at the time the CAT NMS Plan was approved, the Commission should update its economic analysis of that plan. Because that analysis was conducted in the process of deciding whether to approve the original plan and was appropriately based upon the information available to the Commission at the time it made that determination, we decline to do so. However, in analyzing the potential impacts of the Proposed Amendment on efficiency, competition, and capital formation—including our discussion of the economic baseline—the Commission has supplemented the analysis in the CAT NMS Plan Approval Order with additional information learned since the time of that Order. Therefore, for the purposes of this analysis, the effects are measured against a baseline that recognizes that the Proposed Amendment replaces certain provisions of the CAT NMS Plan and the Proposed Amendment also provides detail not previously included in the CAT NMS Plan.[1045] As a result, the Commission provides the baseline required to conduct a comprehensive analysis of the Proposed Amendment in light of issues raised in the Notice and public comments.

Based on its analysis, the Commission believes that the Proposed Amendment will involve efficiency gains along some dimensions but will likely also involve tradeoffs against other forms of efficiency, could negatively alter the competitive position of particular competitors, though the fees associated with the Proposed Amendment are unlikely to be large enough to affect overall competition, and will result in insignificant effects on capital formation.[1046] These effects are discussed below.

A. Efficiency

1. Baseline

In the CAT NMS Plan Approval Order, the Commission identified certain elements of the Original Funding Model that could have negative implications for efficiency and also stated that the significant uncertainty in the Original Funding Model could also have implications for efficiency.[1047] In

[1028] *Id.*

[1029] *See* Citadel July Letter at 35; SIFMA June 2023 Letter at 2; Virtu Letter at 4.

[1030] *See* CAT LLC July 2023 Response Letter at 33.

[1031] *Id.*

[1032] *See* Citadel July Letter at 26, n.112; SIFMA June 2023 Letter at 3; Virtu Letter at 4.

[1033] *See* CAT LLC July 2023 Response Letter at 34.

[1034] *See* SIFMA June 2023 Letter at 3.

[1035] *See* CAT LLC July 2023 Response Letter at 28.

[1036] *Id.*

[1037] *See supra* note 1024.

[1038] *See supra* note 1023.

[1039] *See supra* note 409.

[1040] *See supra* note 410.

[1041] 17 CFR 242.608(b).

[1042] *See* Securities Exchange Act Release No. 96725 (Jan. 20, 2023), 88 FR 5059 (Jan. 26, 2023).

[1043] 17 CFR 242.613(a)(5).

[1044] Some commenters stated that the Participants' analysis of the effects of the Proposed Amendment on Efficiency, Competition, and Capital Formation was lacking analysis and/or information (*see, e.g.,* SIFMA June Letter at 4; Citadel July Letter at 2, 11, 12–13, and 16) and several commenters made general statements that the Proposed Amendment would have negative effects on Efficiency, Competition, and Capital Formation (*see, e.g.,* SIFMA June Letter at 3; Citadel July Letter at 12 and 15). The Commission has independently analyzed the Proposed Amendment using information from the Participants and commenters as well as additional information as indicated.

[1045] Some of the conclusions of the Proposed Amendment on Efficiency, Competition, and Capital Formation provided by the commenters and Participants are assessed relative to alternatives rather than the baseline the Commission used in the analysis herein.

[1046] *See supra* Section III for a discussion of why the Commission is approving the Proposed Amendment.

[1047] *See* CAT NMS Plan Approval Order, *supra* note 2, 81 FR at 84882.

consideration of the comment letters submitted in response to the Executed Share Model, the Commission recognizes that the Original Funding Model would have also resulted in additional inefficiencies. Overall, the Original Funding Model could have resulted in negative, but likely insignificant, reductions in operational efficiencies, skewed incentives for efficiency, and reductions in market efficiencies.

a. Operational Efficiency

The tiered structure of the Original Funding Model would also have led to uncertainties affecting operational efficiencies of Industry Members and Participants. In particular, Industry Members would not have known their per-message cost until the end of the month, though they would have charged their customers in real time, creating an inefficiency. In particular, the Original Funding Model would have charged flat fees to Industry Members and Participants in the same tiers (''Original CAT Fees''). Thus, Industry Members with message traffic near the top of the tier would pay lower fees per message than Industry Members in the same tier but with lower message traffic. Likewise, Participants with more market share in their tiers would pay lower fees per executed share. Even if Industry Members and Participants could predict which tier they would be in, passing-through fees would involve Industry Members and Participants charging based on expected per-message or per-share Original CAT Fees rather than actual per-message or per-share Original CAT Fees, which could have been higher or lower than expected. This uncertainty creates an operational inefficiency in structuring the fee pass-through.

Also, charging Industry Members a flat fee that depends on their message traffic could result in Industry Members, who generally earn revenue only for executed orders,[1048] getting charged for orders that do not transact. This could have resulted in certain Industry Members paying more in Original CAT Fees than they generated from transactions. Further, some Industry Members would have found passing through fees only to those whose orders transact operationally more efficient by increasing existing fees (or reducing incentives such as payment for order flow). These situations would have resulted in transacted orders subsidizing the burdens of message traffic (assuming message traffic is the only cost driver).

Complexities associated with creating tiers in the Original Funding Model would also have created operational inefficiencies. To ensure that the CAT NMS Plan covered its costs with the tiered fees, the creation of the fee schedule would have involved deciding on the number of tiers, estimating how many Industry Members would qualify for each tier, estimating how much to charge each tier, and then justifying each decision. The potential for disagreements resulting from the complexity and the challenges in drafting justifications for such complex decisions could have involved a cumbersome and inefficient fee setting experience.

b. Incentive Effects

The Original Funding Model also could have affected efficiency by skewing incentives. Because fees to be charged by CAT are based on cost recovery, aligning such fees with burdens on CAT could promote efficiency by creating incentives to limit costs. If message traffic is the only cost driver of CAT, the Original Funding Model created incentives for Industry Members to limit costs by limiting their unnecessary message traffic,[1049] but the tiered structure of the Original Funding Model would have dampened these incentives, and message traffic is not the only cost driver of CAT. Further, the uncertainty in the allocations across equities or options and across Participants or Industry Members meant that the Original Funding Model would have created the risk that the inefficiencies of such allocations were less than perfectly aligned with costs. Finally, any pass-throughs to Participants' members or the customers of Industry Members could have further dampened the incentives for cost efficiency. As a result, the Original Funding Model would not have perfectly aligned fees with the costs imposed on CAT, limiting the incentives for cost efficiency.

While the Original Funding Model would have set fees for Industry Members based on their message traffic, the efficiency benefits were unlikely to have been significant. First, its tiered structure would have dampened the incentives to reduce the costs of CAT by reducing unnecessary message traffic. In particular, the Original Funding Model would have assigned Industry Members to tiers based on their message traffic. Within a tier, however, all Industry Members would have been charged the same flat fee. Thus, an additional message would have been free in terms of CAT costs unless it put the Industry Member into a higher tier. So, only those Industry Members close to a cutoff would have had the incentive to reduce message traffic, and Industry Members who expected to be in the top tier would have had no incentive to reduce unnecessary message traffic. Further, Industry Members cannot reduce message traffic without altering how they handle customer orders, which could be counter to their duties, or reducing liquidity, which could reduce market efficiency. Therefore, absent evidence of significant unnecessary message traffic, the efficiency improvements of basing Original CAT Fees on message traffic are unlikely to have been significant.

In addition, since the approval of the CAT NMS Plan, additional information about the cost drivers have been made public and suggest that message traffic is not the only cost driver.[1050] In particular, a September 2021 report shows that 51% of CAT costs are from the ''Linker,'' 17% from storage, and 15% from ''Data, Processing, Collection, & ETL.'' In addition, the Participants in their response to commenters indicated that 75% of CAT costs are the processing and storage of CAT data in the cloud.[1051] The ''Linker'' costs are the costs to link order messages across a lifecycle.[1052] These costs involve looking across four days of data and are likely related to message traffic. While the report does not separate options messages from equities messages, it does indicate that Participant message traffic involved in linkage processing is much larger than Industry Member message traffic. However, the Commission understands that complexity of the order lifecycles is a cost driver within the linkage processing, and certain order handling practices of Industry Members, such as the use of riskless principal transactions, involve more complex linkages than other order handling practices. Indeed, while one commenter stated, ''costs are a direct result of the total number of messages that CAT Reporters (both Participants and

[1048] *See* Notice, *supra* note 7, 88 FR at 17103.

[1049] *See* CAT NMS Plan Approval Order, *supra* note 2, 81 FR at 84881.

[1050] *See* CAT Industry Webinar: CAT Costs, *supra* note 873. The Participants stated in this presentation to Industry Members in Sept. 2021, that, ''[t]he primary cost drivers for the CAT are compute costs (*e.g.,* linker) and storage costs. These costs are volume based and have increased significantly each year beyond the volume estimate included in the Plan.''

[1051] CAT LLC July 2023 Response Letter at 22. For the first quarter of 2023, 72.9% of CAT costs are cloud costs (*See* CAT Financial and Operating Budget | CATNMSPLAN*).*

[1052] *Id. See also,* CAT NMS Plan Approval Order, *supra* note 2, 81 FR at 85024–5 for a discussion of linkage requirements.

Industry Members) send to CAT, the costs of processing and linking such messages, and the costs to CAT of providing tools and mechanisms to the SEC and SROs to analyze the CAT data,'' [1053] the processing and linking and regulatory use costs are not perfectly aligned with message traffic.

The Original Funding Model did not indicate how Original CAT Fees would be allocated to equities versus options, but this allocation decision would have had an effect on efficiency. The options markets account for the vast majority of message traffic, but most of the options market message traffic is on-exchange message traffic (mostly market maker quotes).[1054] However, option market maker quotes likely do not have complex order lifecycles that would drive the costs of the linkage processing. Further, the Commission understands that the linkage processing of equities orders is generally more complex than the linkage processing of options orders. As a result, it is unlikely that the Original Funding Model would have successfully matched Original CAT Fees with cost burdens without a complex algorithm to allocate costs across equities and options.

The Original Funding Model also had the potential to result in a lack of incentives for Participants to seek efficient ways to achieve the regulatory objectives of CAT.[1055] In particular, the Original Funding Model did not specify the allocation between Industry Members and Participants and it could have skewed heavily toward Industry Members. If the Original CAT Fees would have offset CAT costs without the Participants internalizing those CAT costs, Participants could lack the incentive to limit costs. Thus, a lower allocation to Participants could reduce Participants' incentives to limit CAT costs.

The ability for Participants and Industry Members to pass through fees could reduce incentive effects of the Original Funding Model, but the Commission believes that Participants and Industry Members would still have had some incentives to limit costs. In the CAT Approval Order, the Commission recognized that FINRA could pass through its fees to its members.[1056] Other Participants could have also passed through their fees to their members, but such pass-throughs could take several forms. The Commission understands that Participants, including FINRA, have many revenue sources, such as transaction fees, data fees, connectivity fees, listing fees, regulatory fees. In fact, because the Original Funding Model charged Participants based on their market share, the most direct way for Participants to pass through the costs would have been to increase fees related to their market share—their transaction fees, which are based on a fee schedule set pre-trade. Because the per volume CAT fee would have been unknown at the time the Participants had to file the transaction fees for such volume, the Participants would have internalized the risk of the pass-through fees not covering their Original CAT Fees. Likewise, Industry Members who pass-through their Original CAT Fees would have had reduced incentives to limit CAT costs, but the inability to structure their pass through to perfectly align with Original CAT Fees would have forced some internalization of costs.

c. Market Efficiency

The Original Funding Model could have resulted in market inefficiencies, though these inefficiencies were unlikely to be significant.[1057] Several of these inefficiencies derive from the fact that the Original Funding Model would have charged Industry Members a flat fee according to a tiered fee schedule. An Industry Member's tier would have been determined by its message traffic. Because providing liquidity, including but not restricted to market making, involves more potential message traffic, the Original Funding Model could discourage liquidity provision. Discouraging liquidity provision could reduce liquidity, particularly in less liquid securities, potentially reducing market efficiency. The tiered nature of the Original Funding Model reduced the potential reduction in liquidity by flattening the fees, but this could create its own inefficiencies if Industry Members alter activity to avoid qualifying for a higher tier. The Commission concluded in the CAT NMS Plan Approval Order that any changes in behavior were unlikely except in those Industry Members near a fee-tier cutoff point, and, therefore, these behavior changes would likely not have a significant effect on market quality or efficiency.[1058]

2. Analysis of the Proposed Amendment

The Participants provided an analysis of efficiency in the Notice. In particular, the Participants state that, ''By providing for the financial viability of the CAT, the [Executed Share Model] would allow the CAT to provide its intended benefits. For example, the CAT is intended to provide significant improvements in efficiency related to how regulatory data is collected and used. In addition, the CAT could result in improvements in market efficiency by deterring violative activity.'' [1059]

The Commission considered whether the Executed Share Model promotes efficiency along several dimensions: operational efficiency, incentive alignment, and market efficiency. In this analysis, the Commission considered both how the Executed Share Model differs from the Original Funding Model and the additional details in the Executed Share Model not previously included in the CAT NMS Plan. In the analysis below, the Commission explains that the Executed Share Model itself will promote operational efficiency and market efficiency, trade off some efficiencies associated with aligning fees with CAT costs against others, and create some efficiency-improving incentives at the expense of others. The analysis also recognizes below that some commenters stated that the Executed Share Model is less efficient than it could be.

a. Operational Efficiency

The Commission believes that the Executed Share Model presents some operational efficiency improvements over the Original Funding Model while recognizing that commenters point out that it may not be as efficient as other alternatives. The Executed Share Model could improve efficiency over the Original Funding Model by providing more certainty on potential costs for Industry Members and by reducing the complexity of the fees. However, it is not clear that the Executed Share Model presents an operational efficiency improvement over the Original Funding Model with respect to precision of estimates of expected total fees to be collected.

Relative to the Original Funding Model, Industry Members and Participants will be better able to observe their fee per activity, in this

[1053] SIFMA May 2023 Letter at 4.

[1054] Furthermore, because options market makers do not report many of their quotes to CAT, instead sending a quote-sent time stamp to options exchanges that is included in the exchanges' CAT data, additional option market maker quotes increase the message traffic of Participants rather than option market makers and are, thus, not counted in the message traffic of Industry Members in the Original Funding Model. Consequently, roughly 72% of CAT message traffic could only affect Participant fees, which are capped in the Original Funding Model, though the Plan does not define the exact cap. *See* CAT NMS Plan Approval Order, *supra* note 2, 81 FR at 84873.

[1055] *See* CAT NMS Plan Approval Order, *supra* note 2, 81 FR at 84891–2.

[1056] *Id.* at 84853.

[1057] *See* CAT NMS Plan Approval Order, *supra* note 2, 81 FR at 84879.

[1058] *Id.* at 84879.

[1059] *See* Notice, *supra* note 7, 88 FR at 17115.

case per share transacted, and can more easily pass all or a portion of those fees through to members or customers. Under the Executed Share Model, the CAT Fee and Historical CAT Assessments per Executed Equivalent Share are known before an order is submitted such that all market participants can estimate in advance the fees charged on each potential transaction rather than Industry Members only learning about their fees per message after the end of the month under the Original Funding Model.[1060] Having more precise information on fee rates helps Industry Members and Participants who choose to pass-through these fees to create fee schedules for their customers that better reflect their costs, resulting in operational efficiencies. In response to the commenter who said that Industry Members ''are not set up to track and pass-through fees to the client [broker-dealers] that sent them the orders that resulted in executions'' [1061] and other similar comments,[1062] the Commission understands that such Industry Members generally have arrangements with client broker-dealers for services based on executed shares and these arrangements could include charges to cover various fees.[1063] Further, CAT LLC argues that charging the executing brokers as specified in the Executed Share Model is an efficient way for CAT LLC to bill Participants and Industry Members as it is simple, straightforward, and in-line with existing fee and business models.[1064] They also acknowledge that certain Industry Members will have to develop processes to collect pass-through CAT fees from clients and describe that the Plan Processor plans to make available trade-by-trade data to CAT Executing Brokers for each CAT bill, which will facilitate the passing-through of CAT fees.[1065]

The Commission believes that the Executed Share Model reduces the complexities of the Original Funding Model, improving operational efficiency, but that the Executed Share Model may not increase the precision in estimating the fees to be collected, thus creating uncertainty in its impact on operational efficiency. The Executed Share Model will not involve designing a tiered structure that estimates how many Industry Members and Participants will qualify for each tier based on projections of each's message traffic or market share, coming up with cutoffs and flat fees in each tier to cover projected costs, and justifying each projection model, tier cutoff, and flat fee. Instead, the Executed Share Model involves estimating future volume, dividing budgeted costs by the estimated future volume, and justifying the estimated future volume model and budgeted costs. Thus, the Executed Share Model will be much less complex for Participants to implement. However, because the Executed Share Model involves estimating future volume and the Commission has observed significant fluctuations in volume, the fees actually collected in the Executed Share Model will not necessarily match the budgeted costs. Because the Original Funding Model had similar uncertainties, the Commission cannot determine if this inefficiency is more or less severe for the Executed Share Model.

The Commission recognizes the inefficiencies pointed out by some commenters associated with invoicing CEBBs and CEBSs directly rather than using clearing brokers to collect fees.[1066] Because the Original Funding Model allowed for but did not specify the use of clearing brokers, this inefficiency is not relative to the baseline but is relative to an alternative. The industry's current practice is to collect certain regulatory fees from the sell-side clearing broker-dealer. One commenter stated, ''[c]learing Firms are best suited to process the collection of fees as it can occur at trade settlement and the cost is ultimately borne by the end beneficiary of each transaction. This seems prudent from a logistical and efficiency perspective and, in our opinion, also introduces the least financial risk to the industry today.'' [1067] This commenter also made similar statements in subsequent comment letters.[1068] However, as another commenter noted, collecting CAT fees from clearing broker-dealers could introduce inefficiencies as well.[1069]

b. Incentive Effects

The Commission recognizes the potential for the Executed Share Model to affect incentives and, therefore, either improve or harm efficiency. Aligning fees with costs promotes economic efficiency because Industry Members and Participants bear the costs they directly or indirectly impose on CAT NMS, creating the incentive to limit costs. Overall, the Executed Share Model will have inefficiencies related to not perfectly aligning with costs, but might not be any more inefficient than

[1060] *See supra* Section IV.A.1.a for a discussion of how the per-message fees would have varied within the flat-fee tiers of the Original Funding Model. Also, one commenter stated that the Proposed Amendment would afford industry with a ''straightforward rate to be applied across buyers and sellers.'' *See* DASH July Letter at 2.

[1061] *See* SIFMA May 2023 Letter at 5.

[1062] *See, e.g.,* SIFMA June 2023 Letter at 2; MMI July Letter at 2; Citadel July Letter at 20 and 24; Citadel Letter August 2023 at 5–6; and Virtu Letter at 4–5. Citadel July Letter at 20 and 24 also focused specifically on the ability for IMs to pass through Historical CAT Assessments, but those fees would also have a fixed rate charged to future executed shares, so passing those fees through would still represent an efficiency improvement over the Original Funding Model.

[1063] *See supra* Section IV.A.1.a for information on current fee arrangements based on executed shares. *See also* CAT LLC July 2023 Response Letter at 9 and 34.

[1064] *See* CAT LLC July 2023 Response Letter at 3–4.

[1065] *See* CAT LLC July 2023 Response Letter at 9–10.

[1066] *See* DASH January 3 Letter at 1.

[1067] *Id.*

[1068] *See* DASH April Letter at 1; DASH July Letter at 1.

[1069] This could result in Industry Member CAT fees being borne by clearing broker-dealers. The SIFMA May 2023 Letter said that allocating ''CAT Fees to clearing brokers would have led to unfair burdens on them and could have resulted in them shouldering the burden of CAT costs in scenarios in which they could not determine which clearing client was responsible for the costs.'' This commenter, commenting on the prior funding proposal which originally proposed to assess CAT fees on clearing brokers instead of executing brokers, stated that clearing brokers would especially have difficulty passing on the Past CAT Costs to their clearing clients. *See* Letter from Ellen Greene, Managing Director, Equities & Options Market Structure, and Joseph Corcoran, Managing Director, Associate General Counsel, SIFMA, to Vanessa Countryman, Secretary, Commission (Oct. 7, 2022), at 4–5, *available at https://www.sec.gov/comments/4-698/4698-20145239-310561.pdf.* This commenter also discussed the additional implementation and operational costs the prior funding model would impose on clearing broker-dealers. *See* Letter from Ellen Greene, Managing Director, Equities & Options Market Structure, and Joseph Corcoran, Managing Director, Associate General Counsel, SIFMA, to Vanessa Countryman, Secretary, Commission (June 22, 2022) (''SIFMA June 2022 Letter''), at 9, *available at https://www.sec.gov/comments/4-698/4698-20132695-303187.pdf.* Also, the Proposed Amendment requires the collection of CAT fees from both the buy and sell side of the transaction. Commenters on the prior funding proposal stated that current industry practice does not involve clearing broker-dealers collecting fees from the buy-side of the transaction, and thus it might require costly implementation steps from clearing broker-dealers. *See* Letter from Kirsten Wegner, Chief Executive Officer, Modern Markets Initiative, to Vanessa Countryman, Secretary, Commission (June 21, 2022), at 3, *available at https://www.sec.gov/comments/4-698/4698-20132603-303126.pdf;* SIFMA June 2022 Letter at 9; *see https://www.sec.gov/comments/4-698/4698-20132603-303126.pdf;* SIFMA June 2022 Letter at 9. *See also supra* note 58. CAT LLC describes in their response to comments that charging clearing brokers would be less efficient than charging executing brokers because it would require linking executed shares to clearing brokers. They argue that charging executing brokers is simple, straightforward, and in-line with existing fee and business models. They also describe how CAT LLC is planning to make pass-through of costs easier, which would also increase operational efficiency for Participants and Industry Members. *See* CAT LLC July 2023 Response Letter at 3 and 5.

the Original Funding Model. In particular, basing Industry Member fees on share volume rather than message traffic could reduce efficiency relative to the Original Funding Model, but the efficiency benefits of the Original Funding Model would have been dampened by its tiered structure. The Commission recognizes that, based on the breadth of CAT costs, it is not feasible to calculate the cost burden on CAT of each CAT Reporter[1070] and the Executed Share Model could also have some efficiency improvements over the Original Funding Model. The Commission also recognizes the potential risks of the Proposed Amendments on not incentivizing Participants enough to consider cost efficiency. In addition, the Commission considered other incentives as well, but believes that the potential magnitude of CAT fees is unlikely to significantly affect these efficiencies.

Because CAT costs have some relation to message traffic, a fee schedule less dependent on message traffic such as the Executed Share Model will be less efficient on this dimension. As such, the Executed Share Model could create inefficiencies relative to the message-traffic based Original Funding Model. Further, the Executed Share Model could result in Participants or Industry Members paying different fees across transactions despite potential similarities in cost. For example, Participants or Industry Members will be charged ten times the fee for a 1,000 share transaction than for a 100 share transaction. While 1,000 share transactions may, on average, have a higher burden on CAT than a 100 share transaction because such transactions are more likely to involve more messages and more complex lifecycles, the burden of a 1,000 share transaction on CAT versus a 100 share transaction is unlikely to be ten times higher. However, the incentive efficiencies of the message-traffic based fees in the Original Funding Model would have been dampened by several factors,[1071] including the tiered structure of the Original Funding Model and by the fact that message traffic is not the only significant cost driver for CAT.[1072]

One commenter raised other potential inefficiencies related to outsized allocations to transactions for retail investors associated with those retail investors trading low priced NMS stocks.[1073] The Commission recognizes that such an allocation could discourage brokers from servicing retail investors if they cannot pass through all CAT costs to investors and/or that retail investors could be paying for a large portion of CAT costs. In the Approval Order, the Commission recognized that retail investors were likely to bear costs for CAT and were beneficiaries of CAT.[1074]

Further, if the Executed Share Model over-allocates fees to equity market transactions relative to options market or OTC equity transactions, it will create inefficiency by artificially inflating equity transaction costs while artificially decreasing options and OTC transaction costs. The Commission has mixed information on whether the Executed Share Model will, indeed, over-allocate fees to the equity markets. One commenter stated that equity trading volume creates a relatively low burden relative to options activity.[1075] The Commission disagrees with this statement. Based on March 2023 public market data,[1076] equities (NMS and OTC) account for approximately 73% of the equivalent share volume while options account for approximately 27%. On the contrary, based on an analysis of March 2023 CAT data, equities account for 23% of message traffic while options account for 77%.[1077] The message traffic in the options market is driven by options market quotes, which are reported by options exchanges. If processing and storing CAT messages is a primary cost driver and option and equity messages are equally burdensome, aligning fees to costs would result in the Participants and Industry Members in the equities markets being assessed approximately 23% of the fees, suggesting that the Executed Share Model allocation of approximately 73% of the fees over-allocates fees to equities.

However, because equity order linking complexity likely accounts for higher costs than option order linking complexity, the higher allocation of CAT fees to equity market Participants and Industry Members could promote efficiency. The linkage processing costs of CAT are three times the storage costs.[1078] The Commission estimated that roughly 90% of CAT Participant message traffic and 72% of total message traffic is comprised of options market quotes.[1079] While option market maker quotes account for such a large fraction of message traffic and, thus, storage costs, option market maker quotes involve lower linkage costs than other messages.[1080] Indeed, the equities market accounted for about 48.4% of the number of linkages processed and the number of options linkages processed was a third of the number of options messages reported, reflecting less linkage processing for many options market maker quotes.[1081] Additionally, the Commission understands that

[1070] *See* Notice, *supra* note 7, 88 FR at 17103 (''In light of the many inter-related cost drivers of the CAT (*e.g.,* storage, message traffic, processing), determining the precise cost burden imposed by each individual CAT Reporter on CAT is not feasible.''). *See also* CAT LLC July 2023 Response Letter at 34, where the Participants describe that it is difficult to determine the precise cost burden imposed by each individual CAT reporter. They state that increased trading activity impacts message traffic, data processing, storage, and other factors and, thus, correlate with cost burdens and that Industry Member activity is generally for the purpose of transacting.

[1071] *See supra* Section IV.A.1.c for further discussion of the inefficiencies of the Original Funding Model.

[1072] *See supra* note 1050 and accompanying text for a discussion of CAT cost drivers. The biggest cost driver is for linking order messages into a lifecycle, followed by storage costs.

[1073] *See* Citadel July Letter at 20. This commenter states that trades in stocks with sub $1 prices account for 33% of retail NMS stock trading and that rounding fractional shares to 1 share further increases the share of CAT costs charged to retail transactions. *See* also Citadel August Letter at 4.

[1074] *See, e.g.,* CAT NMS Plan Approval Order, *supra* note 2, 81 FR at 84863, 84881, 84888, and 84893 for examples of statements on investors bearing the costs of CAT and at 84833 to 84845 for ways that investors benefit from CAT.

[1075] *See* FINRA April 2023 Letter at note 23. See also Citadel August Letter at 4 citing to the FINRA April 2023 Letter.

[1076] Calculated using monthly market volume data from Cboe for equities: Cboe, *US Equities: Historical Market Volume Data, available at https://www.cboe.com/us/equities/market_statistics/historical_market_volume/,* OCC for options: Options Clearing Corp., *Market Data: Monthly & Weekly Volume Statistics, available at https://www.theocc.com/market-data/market-data-reports/volume-and-open-interest/monthly-weekly-volume-statistics,* and FINRA for OTC securities: FINRA, *Over-the-Counter-Equities: Market Statistics, available at https://otce.finra.org/otce/marketStatistics/historicalData.* Option contract volume is multiplied by 100 and OTC volume is divided by 100 to establish rough estimates of equivalent share volume to reported equity transactions.

[1077] *CAT Plan Participant and Industry Member Report Card Monthly Summary Tables,* which contain the number of records processed into CAT.

[1078] *See supra* note 1050 and accompanying text for a discussion of cost drivers. ''Linker'' accounts for 51% of CAT costs while storage accounts for 17%. Data processing, Collection and ETL costs are 15%.

[1079] Mar. 2023 CAT data. If processing and storing CAT messages is a primary cost driver, options exchanges' collective 8.9% share of CAT costs (compared to equity exchanges' 13.6% share and FINRA's 10.8% share) may also appear to inefficiently over-allocate the Participants' share of CAT costs to equity exchanges. However, processing and storage costs combined account for lower costs than linkage processing. *See id.*

[1080] *See supra* Section IV.A.1.b for further discussion of option market maker quotes.

[1081] Based on Mar. 2023 CAT data containing statistics for validations and linkage for files submitted to FINRA CAT, the equities market accounted for 1.24 trillion linkages processed on 1.20 trillion messages reported while the options market accounted for 1.33 trillion linkages processed on 4.02 trillion messages reported. Most options market maker quotes have only two events in their CAT Lifecycle (*i.e.,* quote and quote cancelation) and don't require linkage to other CAT events.

equities linkages can be more complex, and thus more costly to process, than are options messages. As a result, the Commission disagrees with the commenter's assertion that equity trading volume creates a relatively low burden relative to options activity.

The Commission believes that the Executed Share Model presents a risk, as the Original Funding Model did,[1082] that Participants might not have the incentive to seek efficient ways to achieve the regulatory objectives of CAT. While the Executed Share Model specifies an allocation that was unknown in the Original Funding Model, several commenters question whether the allocation provides Participants with incentives to seek efficiency.[1083] Commenters also expressed concern with rising CAT costs to illustrate the magnitude of this potential inefficiency,[1084] stating that they do not have enough transparency on cost drivers to assess whether CAT costs are reasonable,[1085] that no data or estimates regarding future costs were provided,[1086] and that the Proposed Amendment has no mechanism to control or limit the budget.[1087] Some commenters further stated that the ability to pass through fees lessens Participants' incentive to control costs.[1088]

The Participants have stated that the transparency and level of detail in the fee filings will impose a discipline on the Participants to justify the costs of CAT.[1089] For example, separating Historical CAT Costs from Prospective CAT Costs allows Industry Members more insight into the sources of CAT costs underlying the fees and to allow Industry Members to comment on the size of such fees. The Participants offer explanations for the increases in CAT costs. For example, at the adoption of the CAT NMS Plan in 2016, the Commission estimated that the CAT would receive 58 billion records per day, but the Participants state that as of the fourth quarter of 2022, the CAT receives an average 418 billion records per day.[1090] This highlights the difficulty in estimating future costs because costs are directly related to trading activity. While the Participants did not provide data or estimates regarding future costs, they discussed how costs are related to trading activity, which should help Industry Members and other market participants form their own estimates.

The Participants also disagree that they are not incentivized to manage costs with a one-third allocation. They argue that currently, there is a strong incentive to manage costs while paying 100% of the costs and that incentive will continue with a one-third allocation. They state that CAT costs are substantial and they will continue to receive critical review.[1091] In response to comments on whether the exchanges will pass through all of their fees, some of the equity exchange Participants already charge transaction fees at the maximum level allowed by regulation, which prevents them from increasing their transaction fees to efficiently pass through all CAT fees to their members.[1092] As a result, such equities exchanges will likely internalize some of their CAT fees, ensuring some incentive to limit costs. In addition, the fact that FINRA is expected to be the heaviest regulatory user of CAT suggests that FINRA being responsible for a large proportion of CAT costs promotes efficiency.[1093] Further, the Participants argue that the complexity and diversity of Industry Members' chosen business models and order handling practices contributes substantially to CAT costs because they result in increased processing and storage costs.[1094] In contrast, exchange features are not nearly as diverse as the ways in which Industry Members execute trades.[1095] In addition, Industry Members have customers that create CAT costs related to FDIDs, CCIDs, and CAIS, while Participants do not.[1096] Further, the Participants state that ''Industry Members have far more late data and corrections than Participants'' and that ''[t]he linker costs related to late data and corrections are significant.'' [1097] The Commission believes that Industry Members being responsible for a large proportion of CAT costs promotes efficiency. This is particularly valid for late data and corrections, which is something Industry Members can directly control to reduce overall CAT costs.

The Commission believes the Executed Share Model trades off incentives to inefficiently spend too much against incentives to inefficiently spend too little. The Commission does not believe that being responsible for CAT costs (or having to internalize CAT costs they do not pass through) will result in Participants having the incentive to under-spend on regulatory tools.[1098] Any such under-spending would not reduce the Participants' self-regulatory duties and could result in inefficiencies in their own regulatory costs.

One commenter stated that charging for Historical CAT Costs using current volumes bears no relation to the contributions to CAT Costs.[1099] The Commission agrees that the Historical Assessments in the Executed Share Model do not provide much incentive for efficiency. However, this does not reflect a change in the efficiency from the Original Funding Model, because Industry Members cannot retroactively change their behavior to reduce CAT

[1082] *See supra* Section IV.A.1.b.

[1083] *See, e.g.,* Citadel July Letter at 1, 5, 6, and 16; Citadel August Letter at 2; MMI July Letter at 1–3.

[1084] *See, e.g.,* Citadel July Letter at 2, 5, 7–9, 23, and 26–27; Citadel August Letter at 7–8; FIA PTG at 4–5; FIF/SIFMA at 5. One commenter pointed out that CAT costs typically exceed the budget by 20% (*See* Citadel July Letter at 8–9, n.21; Citadel August Letter at 7). In addition, one commenter stated that CAT operating costs significantly exceed cost estimates in the CAT NMS Plan and recent increases in CAT operating costs are not sustainable (*See* FIF/SIFMA Letter at 7–8).

[1085] *See, e.g.,* Citadel July Letter at 2, 6–7, 13–14, and nn.63, 64; Citadel August Letter at 6–7; FIA PTG at 1 and 4, MMI July Letter at 3. In addition, one commenter stated that enhanced transparency about CAT costs is necessary, especially for the cloud costs (*See* FIF/SIFMA Letter at 8–9).

[1086] *See* Citadel August Letter at 7.

[1087] *See, e.g.,* SIFMA June Letter at 2 and 4; Virtu Letter at 4; FIF/SIFMA Letter at 5; SIFMA AMG Letter at 3. One commenter (FIF/SIFMA Letter at 5) pointed out that there is no legal limit to CAT costs. One commenter (Citadel August Letter at 7) states that there are no constraints on costs.

[1088] *See, e.g.,* FIA PTG Letter at 2–3; Citadel July Letter at 16 and 22; and MMI July Letter at 4.

[1089] *See also,* CAT LLC May 2023 Response Letter at 10–11 for a discussion of other efforts to manage the costs of CAT. The Participants provide a more comprehensive response about cost management efforts (*See* CAT LLC July 2023 Response Letter at 19–20). They state that Industry Members will have ample opportunity to comment, there will be quarterly budget information and financials, there is Commission oversight, and the Participants have ongoing cost discipline efforts through a cost management group and other efforts. For more details of the activities of the cost management group, *see* CAT LLC July 2023 Response Letter at 22–26.

[1090] *See* CAT LLC July 2023 Response Letter at 22.

[1091] *See* CAT LLC July 2023 Response Letter at 22.

[1092] *See* Securities Exchange Act Release No. 96494 (Dec. 14, 2022), 87 FR 80266, tbl.5 (Dec. 29, 2022). While exchanges charge several tiers of fees, they will not be able to raise the fees that already match the fee cap.

[1093] *But see* FINRA April 2023 Letter: ''it is unclear . . . how the outsized allocation to FINRA is based on the extent to which FINRA participates in and benefits from the markets. In addition, this rationale conflates the costs to create and operate CAT with the usage of CAT data.'' The Commission believes that data usage does significantly contribute to CAT costs. Query tools, for example, account for 7% of CAT costs. *See supra* note 1050. Note that FINRA's allocation in the Original Funding Model (~48% for Participants' share of the costs allocated to equities) could have been the same or greater than the allocation in the Executed Share Model.

[1094] *See* CAT LLC July 2023 Response Letter at 7.

[1095] *See supra* note 1094.

[1096] *See supra* note 1094.

[1097] *See supra* note 1094.

[1098] The Participants state that they seed to reduce costs ''without adversely affecting the regulatory goals of the CAT.'' *See* CAT LLC July 2023 Response Letter at 22.

[1099] *See* SIFMA January 2023 Letter at 7.

costs under either model. Indeed, by separating Historical CAT Assessments from CAT Fees, the Executed Share Model could allow Industry Members and Participants to more clearly assess how their own actions could affect the Prospective CAT Costs and their CAT Fees to promote improvements to efficiency relative to the Original Funding Model.

The Executed Share Model could change other incentives that could potentially affect efficiencies, but the expected magnitude of CAT Fees will mitigate the impact of such incentive changes. For example, if the fees for OTC transactions are not passed on to non-FINRA members, the Executed Share Model could discourage FINRA membership by those who have a choice. Further, the Historical Fee Rate in Exhibit C of $0.0000417950 per Executed Equivalent Share would result in each CEBB and CEBS paying $0.00001393167 per Executed Equivalent Share (one third of $0.0000417950). A comparison to recent Section 31 fees of $0.00009 per share to $0.0004 per share [1100] and average effective half spreads of $0.013 [1101] indicates that the anticipated Historical Fee Rate and Fee Rate, assuming the Fee Rate is of a similar magnitude as the Historical Fee Rate, are expected to be relatively small.[1102]

c. Market Efficiency

The Commission believes that the Executed Share Model will promote market efficiency, but has uncertainty as to the degree of any improvement. The Executed Share Model eliminates the disincentives to provide liquidity of the Original Funding Model that could have resulted in market inefficiencies, including removing the potential for perverse incentives near the tier cutoffs.[1103] Instead of paying higher fees with more message traffic, which would discourage liquidity providing activity,[1104] the Executed Share Model charges a fee for each Executed Equivalent Share. Because market making and other liquidity providing activity tends to have a high ratio of message traffic to transactions, the Executed Share Model could be more favorable towards providing liquidity than the Original Funding Model. Promoting liquidity provision promotes market efficiency. However, because the Original Funding Model addressed this disincentive in its tier structure, the Commission cannot be certain that the reduction of this disincentive would have a significant effect on market efficiency. Further, the Commission previously concluded that the effect of behavior changes around the tier cutoffs on market efficiency was likely not significant.[1105] As a result, the Commission believes the removal of tiers promotes market efficiency but is unable to conclude that it will significantly improve market efficiency.

Some commenters stated that the Proposed Amendments would harm liquidity provision and increase costs for investors, thus harming market efficiency.[1106] The Commission recognizes that in charging fees only to CEBB and CEBS, the fees will be charged to fewer Industry Members than under the Original Funding Model and that market makers could be charged a large proportion of those fees. This could increase the importance of passing through fees to the ability to spread those fees out among more market participants. The Commission believes that efficiency improvements to the ability to pass through fees [1107] will help alleviate the risk that CAT fees will harm liquidity provision from market makers and market efficiency.

Some commenters argued that under the Proposed Amendment all CAT fees will ultimately be passed through to investors [1108] and retail investors in particular,[1109] thereby increasing transaction costs for investors and reducing market efficiency. The Commission recognizes that CAT fees may be passed through to investors, but the Proposed Amendment covers the allocation of CAT fees for operating the CAT among Participants and Industry Members and does not address whether Industry Members pass through their CAT fees to their customers.[1110] Further, Industry Members may have passed through CAT fees to their customer under the Original Funding Model as well. Hence, any impact on market efficiency of CAT fees being potentially passed through to investors under the Proposed Amendment may not represent a change to the baseline. Finally, while Industry Members may pass through CAT fees to their customers, the customers also receive a

[1100] Section 31 fees are expressed per dollar volume traded. Translating this to a per share range involves identifying reasonable high and low trade sizes. The lower end of this range comes from the 25th percentile in $ trade size of 1,200 and share trade size of 71 from the first quarter of 2021. The higher end of this range comes from the 75th percentile in $ trade size of 5,200 and share trade size of 300 from the first quarter of 2021. Section 31 fees have ranged from $5.10 per $Million to $23.10 per $Million from Oct. 1, 2016 to Mar. 1, 2023. The CAT LLC July 2023 Response Letter at 18–19 offers two additional comparisons to transaction-based fees. They state that ''Nasdaq charges various transaction-based equities fees, ranging from $0.0005 per share to $0.0030 [per share].'' They also state that ''Cboe charges an options regulatory fee that is $0.0017 per contract, and NYSE American charges an options regulatory fee of $0.0055.'' Assuming that option contracts are for 100 shares of the underlying, this would translate to options regulatory fees of $0.000017 and $0.000055 per equivalent share.

[1101] This is the average share-weighted effective spread across more liquid stocks from the first quarter of 2021. More liquid stocks were defined as the stocks in the most actively traded decile by total daily trading volume. Effective spreads are a measure of transaction costs. For each trade, the effective spread was calculated as the absolute value of the difference between the trade price and the quote midpoint at the time of the trade. Less liquid stocks have higher effective spreads, making the CAT fees even smaller relative to transaction costs.

[1102] *See* Notice, *supra* note 7, 88 FR at 17130. In particular, Exhibit C sets forth illustrative Historical CAT Assessments. While this is an illustrative example and actual Historical CAT Assessments may differ, the Commission believes that the Historical Fee Rate per equivalent share, will be calculated using the methods laid out in the table ''Calculation of Historical CAT Assessment.'' Further, the Commission assumes that the example Historical Fee Rate is of the approximate magnitude of potential Historical Fee Rates because this rate was calculated using actual CAT costs and volume estimates grounded in historical volume. While the rate may be imprecise for the reasons discussed in Exhibit C, the rate is unlikely to be orders of magnitudes larger because the sample fees assume two-year collection whereas the Operating Committee could choose a longer collection period. While Exhibit C only estimates Historical Fee Rates, the Commission does not expect Fee Rates to be significantly larger than Historical Fee Rates because Historical Fees will cover a longer time period than CAT Fees and will cover a broader scope of activities than CAT Fees. Historical Costs include costs incurred since the CAT Approval in Nov. 2016 to build, operate and maintain CAT up to a certain date and will be spread out over two to five years (the estimate was based on spreading it out two years). On the other hand, CAT Fees are based on Prospective Costs, which are estimates of monthly costs from a certain date forward and include costs to operate and maintain CAT. While some commenters expressed concern about increasing CAT costs that are much higher than those estimated in the 2016 Approval Order (*See, e.g.,* SIFMA June Letter at 4; MMI July Letter at 3; and Virtu Letter at 4), some of those costs may reflect implementation costs in addition to ongoing costs. Once CAT is fully implemented, the Commission expects annual operating costs to reflect ongoing costs only. *See also* CAT LLC July 2023 Response Letter at 17 for a comparison and discussion of historical and prospective CAT costs. The CAT LLC July 2023 Response Letter at 18–19 also provides another example of a Historical Fee Rate. They add an additional year and consider all Historical CAT Costs for prior to 2023 and find that each CEBB and CEBS would pay $0.0000142689 per executed equivalent share (one third of $0.0000428068). The Historical Fee Rate based in this example is close to the Historical Fee Rate in Exhibit C.

[1103] *See supra* Section IV.A.1.a.

[1104] *Id.*

[1105] *See supra* note 1058 and accompanying text.

[1106] *See, e.g.,* MMI July Letter at 2; Citadel July Letter at 2; Virtu Letter at 5. One commenter stated that the Proposed Amendments would disproportionately impact market makers in particular (*see* Citadel July Letter at 2 and Citadel August Letter at 4).

[1107] *See supra* Section IV.A.1 for a discussion of pass-through efficiency improvements.

[1108] *See* SIFMA AMG Letter at 2.

[1109] *See* Virtu Letter at 5.

[1110] *See* supra Section III.A.2.

benefit from the CAT. The CAT provides more effective oversight of market activity, which could increase investor confidence, resulting in expanded investment opportunities and increased trading activity.[1111]

B. Competition

Several commenters stated that the Proposed Amendments present a burden on competition.[1112] The Commission analyzed the impact of the Proposed Amendments on the competition for trading services, broker-dealer services, and regulatory services. The Commission believes the Proposed Amendment could negatively alter the competitive position of a few types of competitors for trading services and broker-dealer services, but the Commission also believes that whether such changes will render these markets less competitive overall is uncertain. Specifically, the Commission believes that the Executed Share Model could provide exchanges with a competitive advantage relative to off-exchange market makers who internalize in providing trading services. Further, the Executed Share Model could provide competitive advantages to certain broker-dealer business models over others and could harm the competitive position of smaller broker-dealers by putting a strain on their net capital.

1. Baseline

In the CAT NMS Plan Approval Order, the Commission identified certain elements of the Original Funding Model that could have negative implications for competition in trading services, broker-dealer services, and regulatory services.[1113] In addition, the Commission stated ''the uncertainty regarding how the [Operating] Committee allocated the fees used to fund the Central Repository could affect the conclusions on competition.'' [1114]

a. Trading Services

The market for trading services, which is served by exchanges, ATSs, and liquidity providers (internalizers and others), relies on competition to supply investors with execution services at efficient prices. These trading venues, which compete to match traders with counterparties, provide a framework for price negotiation and disseminate trading information. The competitors for trading services compete on a number of dimensions, such as transaction fees and execution quality, and some attempt to attract order flow by paying for that order flow or otherwise rebating.

The market for trading services in options and equities consists of 24 national securities exchanges, which are all Plan Participants, and off-exchange trading venues including broker-dealer internalizers, which execute substantial volumes of transactions in equities, and 39 ATSs, which are not Plan Participants.[1115] Aside from trading venues, exchange market makers provide trading services in the securities market. These firms stand ready to buy and sell a security ''on a regular and continuous basis at publicly quoted prices.'' [1116] Exchange market makers quote both buy and sell prices in a security held in inventory, for their own account, for the business purpose of generating a profit from trading with a spread between the sell and buy prices. Off-exchange market makers also stand ready to buy and sell out of their own inventory, but they do not quote buy and sell prices.[1117]

In the Original Funding Model, the portion of fees allocated to the exchanges, FINRA, and ATSs would have been divided among them according to market share of share volume and the portion allocated to Industry Members would have been divided among them according to message traffic, including message traffic sent to and from an ATS.[1118] The Operating Committee would have allocated fees for the equities market and options market separately based on market share in each market. The Commission concluded that the Original Funding Model could have resulted in a competitive advantage for exchanges over ATSs because message traffic to and from an ATS would have generated fee obligations on the broker-dealer that sponsors the ATS, while exchanges would have incurred almost no message traffic fees.[1119] In addition, the Commission recognized uncertainties associated with the allocation of fees that could have affected competition, such as the level of fees at each tier (though the entities in the smallest activity tier would have paid the lowest fees) and whether off-exchange liquidity providers would have paid fees similar to similarly-sized ATSs and exchanges. Finally, the Commission recognized potentially differential fees across market participants, including lower fees for internalizers, which could affect competition.[1120]

b. Broker-Dealer Services

For simplification, the Commission presents its analysis as if the competition to provide broker-dealer services encompasses one broad market with multiple segments even though, in terms of competition, it actually may be more realistic to think of it as numerous inter-related markets. There are approximately 1,100 broker-dealers that are CAT Reporters.[1121] The competition to provide broker-dealer services covers many different markets for a variety of services, including, but not limited to, managing orders for customers and routing them to various trading venues, holding customer funds and securities, handling clearance and settlement of trades, intermediating between customers and carrying/clearing brokers, dealing in government bonds, private placements of securities, and effecting transactions in mutual funds that involve transferring funds directly to the issuer. Some broker-dealers may specialize in just one narrowly defined service, while others may provide a wide variety of services.

The market for broker-dealer services relies on competition among broker-dealers to provide the services listed above to their customers at efficient levels of quality and quantity. The broker-dealer industry is highly competitive, with most business concentrated among a small set of large broker-dealers and thousands of small broker-dealers competing for niche or regional segments of the market. Broker-dealers often compete among each other through commission rates, service quality, and service variety and some bundle their services. At present, some broker-dealers specializing in individual investors charge zero commissions and instead cover costs by receiving payment for order flow or charging more for other services. To limit costs and make business more viable, small broker-dealers often contract with larger broker-dealers or service bureaus to handle certain functions, such as clearing and execution, or to update

[1111] *See supra* note 761 and preceding text.

[1112] *See* SIFMA June Letter at 1–2; SIFMA July Letter at 2; Virtu Letter at 2 and 3; and Citadel July Letter at 1.

[1113] *See* CAT NMS Plan Approval Order, *supra* note 2, 81 FR at 84882–84884.

[1114] *See id.* at 84882 n.2800.

[1115] *See* Securities Exchange Act Release No. 61358, 75 FR 3594 (Nov. 23, 2016) at 3598–3560, (for a discussion of the types of trading centers). The number of ATSs includes 34 NMS ATSs from *https://www.sec.gov/divisions/marketreg/form-ats-n-filings.htm* and 5 OTC ATSs.

[1116] *See* SEC, *Market Maker, available at http://www.sec.gov/answers/mktmaker.htm.*

[1117] *See* Securities Exchange Act Release No. 96495, 88 FR at 181 (Jan. 3, 2023).

[1118] *See* CAT NMS Plan Approval Order, *supra* note 2, 81 FR at 84793.

[1119] *See id.* at 84883.

[1120] *See id.* at 84879.

[1121] *See* Notice, *supra* note 7, 88 FR at 17104.

their technology.[1122] Large broker-dealers typically enjoy economies of scale over small broker-dealers and compete with each other to service the smaller broker-dealers, who are both their competitors and their customers.

Some broker-dealers may offer specialized services in one line of business mentioned above, while other broker-dealers may offer diversified services across many different lines of businesses. As such, the competitive dynamics within each of these specific lines of business for broker-dealers is different, depending on the number of broker-dealers that operate in the given segment and the market share that the broker-dealers occupy.

The CAT NMS Plan Approval Order described the Original Funding Model as an explicit source of financial obligation for broker-dealers and therefore an important feature to evaluate when considering potential differential effects of the Plan on competition in the market for broker-dealer services.[1123] The Commission understood that the Original Funding Model should have resulted in the smallest broker-dealers paying the lowest fees,[1124] but the Plan did not outline how the magnitudes of fees would have differed across the tiers or whether the smallest broker-dealers would have paid the highest per-message fees. The Commission concluded that, regardless of the differential effects of the CAT NMS Plan Funding Model on small versus large broker-dealers, the CAT NMS Plan Funding Model, in aggregate, would have likely not reduced competition in the overall market for broker-dealer services.[1125]

c. Regulatory Services

In the CAT Approval Order, the Commission considered the effect of the CAT NMS Plan on competition to provide regulatory services.[1126] SROs compete to provide regulatory services in at least two ways. First, because SROs are responsible for regulating their members and the trading within venues they operate, their regulatory oversight is bundled with the operations of their venues. Consequently, for a broker-dealer, selecting a trading venue also involves being subject to regulatory oversight of the SRO that operates that venue. Second, SROs can provide regulatory services for other SROs through the use of RSAs.[1127] In addition, some regulatory activity is coordinated among SROs through multiparty 17d–2 agreements.[1128] FINRA is the primary provider of contracted regulatory services. Any new competitors for regulatory services would face significant barriers to entry in building up the necessary expertise and technical capabilities.[1129]

RSAs are contracts that would not be renegotiated as often as CAT Fees would vary, which limits the precision to which FINRA can increase the charges on these agreements as a mechanism to pass through its CAT Fees. Since the start of the CAT NMS Plan implementation, the Commission has not observed a change in the competition for regulatory services.

2. Analysis of the Proposed Amendment

a. Trading Services

The Participants state that, ''the [Executed Share Model] would not impose an inappropriate burden on competition,'' arguing that transaction-based models for fee recovery are already in place.[1130] The Commission agrees that transaction-based models do offer some efficiency benefits over the Original Funding Model,[1131] but believes the Proposed Amendment may provide a competitive advantage to exchanges and a competitive disadvantage to executing broker-dealers who internalize. The effects on these competitors might not affect the overall level of competition because the fees are expected to be relatively small.

The Commission believes that the Proposed Amendment may provide a competitive advantage for exchanges over off-exchange trading venues, but this advantage may not be large relative to the level of competition and relative to the advantages for exchanges in the Original Funding Model. In particular, the Executed Share Model will allocate higher CAT fee allocations to Industry Members relative to Participants, but exchanges, one type of Participant, could be in a better position to avoid raising transaction fees to offset their CAT fee allocations. Using March 2023 data, the Commission estimates that 31% of share volume is reported to FINRA trade reporting facilities while the remaining 69% is reported by exchanges.[1132] The Commission believes that FINRA's allocation of CAT fees likely will be passed through to Industry Members.[1133] If FINRA's CAT fees are passed through to Industry Members, the Commission believes that Industry Members could bear 77% of CAT costs,[1134] assuming that the exchanges do not also directly pass-through their CAT fee allocations to their members.[1135] In fact, if the exchanges are able to offset their CAT fees in ways other than increasing transaction fees on exchanges, the cost to transact on ATSs or directly through broker-dealers will appear to increase more in response to CAT fee allocations, providing exchanges with a competitive advantage.[1136] This is particularly probable for exchanges who do not rely solely on revenues from transaction fees. However, ATSs might be better off relative to exchanges under the Executed Share Model than they would have been under the Original Share Model, which would have resulted in a competitive disadvantage for ATSs.[1137]

The Executed Share Model could increase the costs of internalization

[1122] *See* Securities Exchange Act Release No. 63241 (Nov. 3, 2010), 75 FR 69791, 69822 (Nov. 15, 2010) (Risk Management Controls for Brokers or Dealers with Market Access).

[1123] *See* CAT NMS Plan Approval Order, *supra* note 2, 81 FR at 84885.

[1124] *See id.* at 84884.

[1125] *See id.* at 84887.

[1126] *See id.* at 84887.

[1127] *See supra* note 320 and accompanying text.

[1128] *See* 17 CFR 240.17d–2.

[1129] The Commission stated in the Approval Order that ''CAT may reduce barriers to entry for this market'' while acknowledging other barriers to entry. *See* CAT NMS Plan Approval Order, *supra* note 2, 81 FR at 84887, note 2849 (describing the barriers to entry addressed by CAT). *See also* Securities Exchange Act Release No. 95388 (July 29, 2022), 87 FR 49930 (August 12, 2022) at 49961 (describing the barriers to entry of potential new national securities associations more generally).

[1130] *See* Notice, *supra* note 7, 88 FR at 17115.

[1131] *See supra* Section IV.A.2.b and IV.A.2.c for discussions of efficiency gains associated with basing CAT fees on shares executed rather than message traffic.

[1132] Calculated using monthly market volume data from CBOE for equities, OCC for options, and FINRA for OTC securities. Option contract volume is multiplied by 100 and OTC volume is divided by 100 to establish equivalent share volume to reported equity transactions.

[1133] *See* FINRA April 2023 Letter at 7 (''If the Funding Model is approved by the Commission, FINRA intends to file a rule change to increase member fees simultaneous with the filing of any proposed rule change to effectuate the Funding Model.'').

[1134] This results from dividing the FINRA allocation (31%) by its share of each off-exchange or OTC Executed Equivalent Share, three, and then adding the Industry Member share, two-thirds, to the result ($31\% \times \frac{1}{3} + \frac{2}{3} = 77\%$) and ignores what Industry Members would pass to investors. Several commenters expressed concerns about the competitive effects of Industry Members paying 78–80% of CAT fees, assuming 100% FINRA pass through, and potentially more if exchanges pass through as well (*See, e.g.,* Virtu Letter at 1–2 and 4, FIA PTG Letter at 2–3, and Citadel July Letter at 16, 21 and 22). The Commission analysis assesses this competition from the ability to competitively price transaction services.

[1135] If exchanges passed their CAT fees onto their members in full, the Industry Members would effectively bear 100% of the CAT allocation (ignoring what they would pass to investors).

[1136] One commenter stated that the Proposed Amendments will result in off-exchange transactions being assessed higher fees than on-exchange transactions (*See* Citadel July Letter at 21).

[1137] *See supra* note 1119 and accompanying text.

relative to agency order matching (or riskless principal), creating a competitive disadvantage for the internalization model, reversing the competitive advantage internalizers would have had under the Original Funding Model.[1138] Specifically, off-exchange market makers will be assessed at least CEBB or CEBS for their internalizing trades, both when trading with non-broker-dealer customers or broker-dealers who are not FINRA members and also when internalizing the orders of FINRA members or their customers. However, they do not have more than one customer to which to directly pass-through this fee. In particular, if an exchange were to directly pass-through its CAT Assessments, it could split its ⅓ fee across buyers and sellers, or ⅙ each (each side would also have a ⅓ CAT assessment as CEBB or CEBS for a total of ½). However, for internalizers to directly pass-through their fees would mean the internalized customer (whether an Industry Member or not) would pay ⅔ of the fee plus whatever pass-through they pay for the FINRA assessment (up to ⅓). Alternatively, an internalizer could also recover CAT assessments by reducing payment for order flow or price improvement.[1139] Any of these alternatives could hurt internalizers competitively and create the incentive to not fully pass-through their fees,[1140] thus reducing their profit margins. In addition, some executing brokers could be charged two-thirds of the fee per Executed Equivalent Share when internalizing the orders of customers or non-FINRA broker-dealers, though this is likely rare.

More generally, any market makers, whether on exchange or not, will be charged fees for their proprietary trading, and this could create competitive advantages in certain situations. The Commission recognizes that this likely would result in on-exchange market makers in equities being at a competitive disadvantage in having to absorb the fees because they do not know the identities of their counter-parties to directly pass-through the fees and they do not have other arrangements, such as payment for order flow, that could facilitate indirectly passing-through fees. Because other liquidity providers who post limit orders and quotes to trade would face the same cost, the displayed quotations on exchanges could appear to be less competitive overall but would likely increase only marginally—enough to cover CAT assessments. Such a marginal increase could also help to offset any disadvantage to internalization because marginally wider spreads could help internalizers avoid reductions in price improvement and payment for order flow. In options, however, the Executed Share Model could result in exchange members who bring an order to an exchange experiencing a competitive advantage in price improvement auctions. In particular, because knowing who is responsible for the order allows them to pass-through their fees, they can bid more competitively in the auctions than can exchange members who cannot directly pass-through the fees.

However, the Commission believes that the magnitude of changes in any competitive advantages or disadvantages is unlikely to significantly affect order flow because fee differences between competing venues are only one of many factors (such as availability of non-displayed order types and price impact characteristics of transactions on different venues) that broker-dealers consider when choosing how to route their order flow. Further, the Executed Share Model levels the playing field between exchanges and ATSs relative to the Original Funding Model.[1141] In particular, the assessments and any pass-throughs paid by broker-dealers or investors of an execution on an ATS could be similar to those of an execution on an exchange, depending on how (and whether) ATSs and exchanges choose to pass-through their fees. Further, the magnitude of the fees in the example in Exhibit C are small relative to current transaction costs.[1142]

b. Broker-Dealer Services

The Commission believes that the Executed Share Model alleviates concerns with the Original Funding Model about the allocation of fees across small and large broker-dealers. In particular, by charging CEBBs and CEBSs based on Executed Equivalent Shares, small broker-dealers are less likely to face CAT fees that are outsized relative to their revenue, whether they act as executing brokers or are charged pass-throughs by executing brokers. This could reduce barriers to entry.

On the other hand, the efficiency gains in passing through fees from the Executed Share Model will not be evenly distributed across broker-dealer competitive strategies. In particular, where competition has driven commissions to zero, the Executed Share Model Fees are more easily passed through to customers of broker-dealers who offer a wider variety of services than for broker-dealers who do not. These latter broker-dealers could be at a competitive disadvantage if they have no other option but to absorb such fees or accept reduced payment for order flow as a form of pass-through from executing brokers. Because more established broker-dealers are more likely to be the ones offering a wider variety of services, this effect could increase barriers to entry.

Furthermore, as one commenter stated, there may be capital requirements associated with carrying the receivable associated with passing-through these CAT fees, which could be burdensome for small and medium-sized Executing Brokers.[1143] According to this commenter, these burdens, coupled with FINRA Rule 15c3–1 will significantly impact healthy small and medium-sized brokers.[1144] If so, the Executed Share Model could increase barriers to entry in providing broker-dealer services. However, whether and how to pass-on the CAT assessments is at the discretion of Executing Brokers.[1145] Further, the economic effect of not passing-on fees is equivalent to passing-on fees to clients who pay more than 30 days after the Executing Broker has booked the receivable.[1146] Therefore, this issue boils down to the magnitude of the potential costs and whether small and medium-sized Executing Brokers are treated the same as others. If small and

[1138] *See supra* note 1120 and accompanying text.

[1139] *See* CAT LLC July 2023 Response Letter at 9–10.

[1140] One commenter stated that many executing brokers will absorb CAT fees (*See* Virtu Letter at 5). However, the Participants argue that the executing brokers may determine to pass their CAT fees through to their own customers and thus may not absorb the CAT fees (*See* CAT LLC July 2023 Response Letter at 8–9). Another commenter stated that fees charged on proprietary trading cannot be passed through (*See* Citadel July Letter at 19–20; *see also* Citadel August Letter at 3). This latter commenter also stated that the potential to pass through some CAT costs does not alleviate the competitive issues (*See* Citadel July Letter at 19; *see also* Citadel August Letter at 4).

[1141] *See supra* note 1120 and accompanying text for a discussion of the effect of the Original Funding Model on ATSs.

[1142] *See supra* notes 1100, 1101, and 1102 and accompanying text for analysis of the potential magnitude of fees under the Executed Share Model.

[1143] *See* DASH January 2023 Letter at 1; DASH April 2023 Letter at 1.

[1144] *See* DASH January 2023 Letter at 2.

[1145] *See supra* Section III.A.4 for further discussion of the comments on net capital and the Commission's response to those comments.

[1146] The effect on net capital comes when Industry Members record that they expect to receive a pass-through from customers as an asset (a ''booked'' receivable) more than 30 days before when their customers pay. If the Industry Members book a receivable for the pass-through more than 30 days before they collect, they cannot count that receivable as an asset toward net capital. If Industry Members instead do not pass-through the fees, they will not have a receivable at all to count toward net capital.

medium-sized Executing Brokers have lower trading activity than large Executing Brokers, their CAT assessments will be lower as well. Further, the per equivalent share fee rate will be the same across all Executing Brokers in the Executed Share Model whereas it would not have been under the Original Funding Model. In fact, small broker-dealers, including Executing Brokers, could be better positioned competitively under the Executed Share Model than under the Original Funding model, which contained uncertainty in the tier structure and whether small broker-dealers would have paid more in assessments than they earn in revenues.

One commenter stated that the top 10 (20) Industry Members would be allocated 50% (70%) of the fees under the Executed Share Model, ''unduly burdening competition''.[1147] The Commission has considered this concentration and believes that several factors alleviate this concern. In particular, the Commission believes that many of these Industry Members will pass through much of their fees to client broker-dealers.[1148] In addition, the Commission believes that the Industry Members that will be charged the most under the Proposed Amendments engage in different services than broker-dealers who are charged the least or not charged fees at all under the Proposed Amendments.[1149] Therefore, these two sets of broker-dealers are not direct competitors.

c. Regulatory Services

The Commission recognizes that if FINRA were to pass through its CAT fees by increasing its fees for RSAs over time, FINRA could be less competitive in providing regulatory services.[1150] This could increase the chances either of exchanges conducting more of their own regulatory services or of another SRO attempting to compete with FINRA for RSAs. Indeed, such potential competitors would not have the burden of having to cover CAT Fees for off-exchange and OTC volume. However, because RSAs are not renegotiated as often as CAT Fees are likely to change, FINRA will likely not attempt to cover all of their share of CAT costs by increasing what they charge for RSAs.[1151] Further, even with access to CAT, the barriers to entry in competing for RSAs could limit new competitors.

C. Capital Formation

In the CAT NMS Plan Approval Order, the Commission stated that the Original Funding Model for CAT was not wholly certain and, thus, stated the ''view that there is uncertainty concerning the extent to which investors will bear Plan costs and consequently to what extent Plan costs could affect investors' allocation of capital.'' [1152] The Participants state that they believe the Proposed Amendment would have a positive effect on capital formation due to improvements in investor confidence.[1153]

The Commission recognizes that the Proposed Amendment may have negative effects on capital formation if the CAT fees ultimately borne by investors are large enough to affect investors' allocation of capital or if capital constraints of small or mid-sized broker-dealers significantly hinder innovating to find more efficient ways to service investors.[1154] However, the Commission believes that the net capital effect would not be significant.[1155] Further, the additional costs borne by investors are likely small relative to current transaction costs.[1156] While recognizing that the Executed Share Model might change which investors ultimately bear CAT costs, the Executed Share Model might not change the total costs borne by investors relative to the Original Funding Model.

V. Conclusion

For the reasons discussed, the Commission, pursuant to Section 11A of the Exchange Act,[1157] and Rule 608(b)(2) [1158] thereunder, is approving the Proposed Amendment. Section 11A of the Exchange Act authorizes the Commission, by rule or order, to authorize or require the self-regulatory organizations to act jointly with respect to matters as to which they share authority under the Exchange Act in planning, developing, operating, or regulating a facility of the national market system.[1159] Rule 608 of Regulation NMS authorizes two or more SROs, acting jointly, to file with the Commission proposed amendments to an effective NMS plan,[1160] and further provides that the Commission shall approve an amendment to an effective NMS plan if it finds that the amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act.[1161]

For the reasons set forth above, the Commission finds that the Proposed Amendment meets the required standard.

It is therefore ordered, pursuant to Section 11A of the Exchange Act,[1162] and Rule 608(b)(2) [1163] thereunder, that the Proposed Amendment (File No. 4–698) be, and hereby is, approved.

By the Commission.

J. Matthew DeLesDernier,

Deputy Secretary.

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[1147] *See* Citadel July Letter at 19.

[1148] *See supra* Section IV.A.2.a.

[1149] Broker dealers that compete as electronic liquidity providers in high-volume securities are likely to have the highest executed share volume and thus pay the highest fees. However, these broker-dealers compete against each other in providing this service, and thus are likely to be similarly burdened by fees under the amendment. Broker-dealers that pay the lowest or no fees are unlikely to compete in this activity because such activity entails high fixed costs in specialized technology and thus are unlikely to gain a competitive advantage from the amendment.

[1150] The Participants state, ''[b]y treating each Participant the same, the CAT fees would not become a competitive issue by and among the Participants.'' *See* Notice *supra* note 7, 88 FR at 17115. *See also* a similar statement at 17122. This conclusion does not seem to address competition to provide regulatory services specifically. However, the comments about the treatment of FINRA in, for example, the FINRA April 2023 Letter at 2–5 warrants considering this competition given FINRA's position in providing RSAs.

[1151] *See* FINRA April 2023 Letter at 7 (''If the Funding Model is approved by the Commission, FINRA intends to file a rule change to increase member fees simultaneous with the filing of any proposed rule change to effectuate the Funding Model.'').

[1152] *See* CAT NMS Plan Approval Order, *supra* note 2, 81 FR at 84893.

[1153] *See* Notice, *supra* note 7, 88 FR at 17115.

[1154] *See, e.g.,* DASH April 2023 Letter at 1; Virtu Letter at 2; SIFMA AMG at 2–3.

[1155] *See supra* Section III.A.4 for a response to a commenter's concerns regarding net capital and *supra* Section IV.B.2.b for an explanation of why the net capital effects are like to be small.

[1156] *See supra* notes 1100, 1101, and 1102 and accompanying text for analysis of the potential magnitude of fees under the Executed Share Model.

[1157] 15 U.S.C. 78k–1.

[1158] 17 CFR 242.608(b)(2).

[1159] *See* 15 U.S.C. 78k–1(a)(3)(B).

[1160] *See* 17 CFR 242.608.

[1161] *See* 17 CFR 242.608(b)(2).

[1162] 15 U.S.C. 78k–1.

[1163] 17 CFR 242.608(b)(2).

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